

RUN THE WORLD

(Policy & Procedure Writers)



Thompson & Horton

HOUSTON • DALLAS • AUSTIN • FORT WORTH

Presenters



Rebecca Bailey

Partner

rbailey@thompsonhorton.com



Leila Gary

Counsel

lgary@thompsonhorton.com



Holly McIntush

Partner

hmcintush@thompsonhorton.com



Agenda

- ☑ Orienting Ourselves
- ☑ Policies & Procedures
 - ☑ Non-Discrimination Statement
 - ☑ Grievance Process(es)
 - ☑ Pregnancy & Parenting
- ☑ Templates
 - ☑ Grievance Process
 - ☑ Pregnancy & Parenting

Where We Are, Where We Are Going



Stage 01

June 23, 2022
Proposed rules
launched on
Title IX's 50th
Anniversary

Stage 02

Department of Ed
received public
comment, finalized
rule, sent to OIRA for
review, and OIRA
completed its review

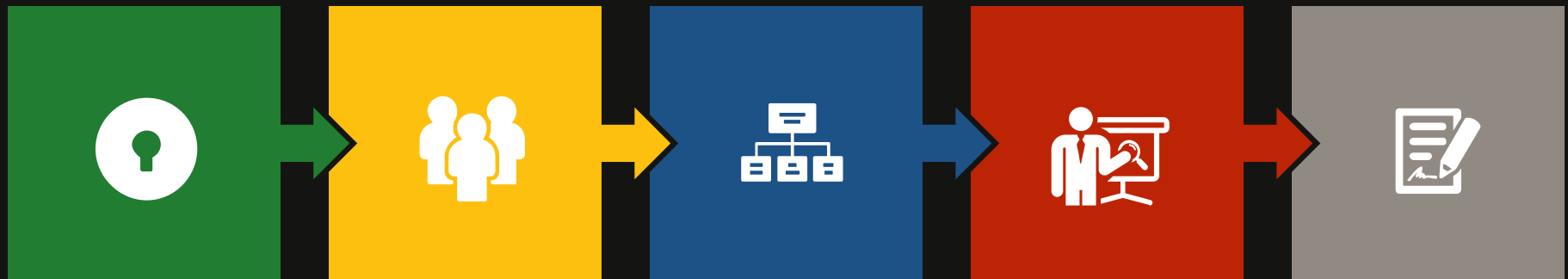
Stage 03

April 19, 2024
Department of Ed
released new Title IX
rules

Stage 04

**New Title IX
Rules effective
August 1, 2024**

Preparing for Implementation



Orient
Yourself

Leadership

Policies &
Procedures

Training

Templates



A Cruel Summer is Coming Are You Ready for It?

January 31, 2024 Webinar



Title IX Tactical Maneuvers: Building Capacity

March 27, Webinar

TacTIXs RECAP

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

thlaw.com/CruelSummer

- ▶ Leadership
- ▶ Training

thlaw.com/Tactical

A Sneak Preview of the New Title IX Rules

thlaw.com/SneakPreview

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Hot Takes



- ▶ Expansion of scope
 - ▶ Codification of LGBTQI+ protections
 - ▶ 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 for sex-based harassment for higher ed

Hot Takes



- ▶ Expansion of reporting and training obligations
- ▶ Greater recognition of interplay between Title IX and student disability laws
- ▶ New rules relating to pregnancy and related conditions
- ▶ Proposed Athletics Rules to be released at a later date



Leadership

-
- Get your leadership on Board
 - Consider your Title IX Team
 - Who is it now?
 - Any potential changes under 2024 rules?



Training

Required *Annual* Training:

- ▶ Title IX Team
- ▶ All Employees
- ▶ Confidential Employees

Recommended Training:

- Students
- Campus Administrators
- Designated Personnel



Preparing for Implementation



Orient
Yourself

Leadership

Training

Policies &
Procedures

Templates

Today's Discussion



Policies &
Procedures

Templates

Let's Dive In!





Policies & Procedures



Overarching Issues

Keep in Mind

- ▶ The rules are detailed, but often leave implementation details to your local policies and procedures
- ▶ Very little must be in actual Board-adopted policy (build in time for Board approval)
- ▶ But a lot must be **in writing** in your local procedures
- ▶ Keep an eye out for places where you need to:
 - Establish “reasonably prompt” deadlines & timeframes
 - Make a decision about things left to the school’s discretion
 - Define an undefined term
- ▶ Remember state and national associations must necessarily keep their model policies broad. It’s up to you to:
 - Make sure details like deadlines and defined terms are in your policy
 - Ensure it is customized for your community’s needs
- ▶ Consult your attorney



General Provisions

Essential Elements

- ▶ Designate Title IX Coordinator
 - ▶ *Decision-Point: Designate one or more?*
 - ▶ *Decision-Point: Designate deputies?*
 - ▶ *Decision-Point: What requirements will be included in policy or procedure regarding how Title IX Coordinator will monitor and address barriers to reporting?*
- ▶ Address supportive measures

- ▶ Mandatory Reporting
 - ▶ Consider including in policy and employee handbooks reporting requirements for confidential and non-confidential employees to report sex-based discrimination and harassment to Title IX Coordinator
 - ▶ *Decision-Point: Who is a confidential employee?*

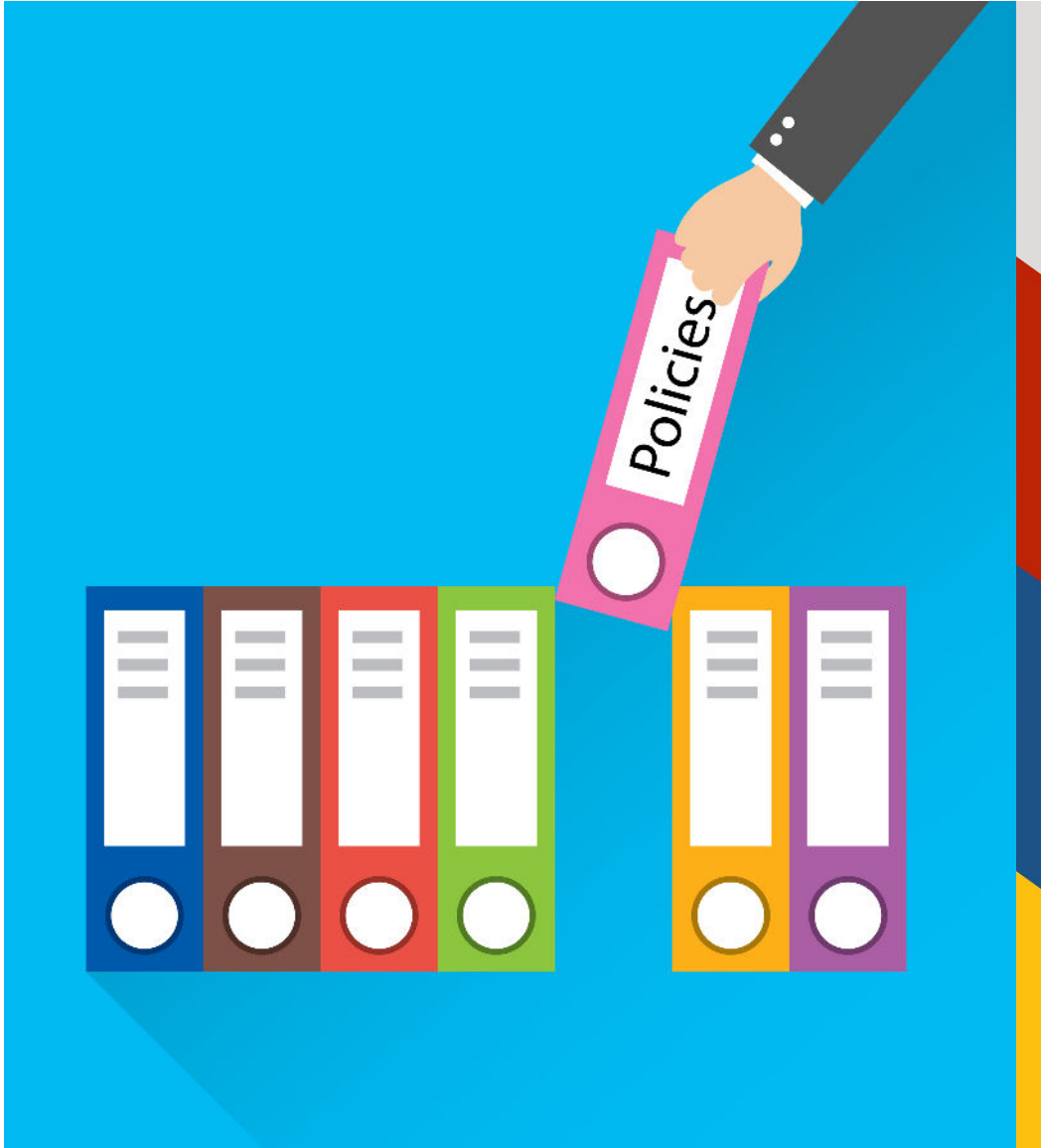
General Provisions

Essential Elements

General Provisions

Essential Elements

- ▶ Mandatory Reporting – Higher Ed
 - ▶ *Decision-Point : Do you want to require all non-confidential employees to report to Title IX Coordinator?*
 - ▶ *Decision-Point: How to monitor public awareness events to ensure respond appropriately*



Non-Discrimination Policy



Nondiscrimination Policy Basic Requirement



“Each recipient must adopt, and publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and” the regulations.

Non-Discrimination Policy Essential Elements

- ▶ Statement that recipient does not discriminate on basis of sex and prohibits sex discrimination in any education program or activity it operates
- ▶ Statement that inquiries may be referred to Title IX coordinator, to OCR, or both
- ▶ Name and contact info for Title IX coordinator
- ▶ How to locate nondiscrimination policy
- ▶ How to report info about conduct that may constitute sex discrimination, how to make a complaint, and how to locate grievance procedures



Nondiscrimination Policy

People Entitled to Notice of Nondiscrimination

- ▶ Students
- ▶ Parents, guardians, or other authorized legal representatives of elementary and secondary school students
- ▶ Employees
- ▶ Applicants for admission and employment
- ▶ All unions and professional organizations with collective bargaining or professional agreements with the recipients



Nondiscrimination Policy Publication

- Website
- Each handbook, catalog, announcement, bulletin, and application form:
 - Given to persons entitled to notice
 - Used in connection with recruitment of students or employees



Nondiscrimination Policy

Other Protected Classes

Don't Forget!

- Race,
- Color,
- National origin
- Religion
- Age
- Disability
- Veteran/Military Status
- Genetic Information



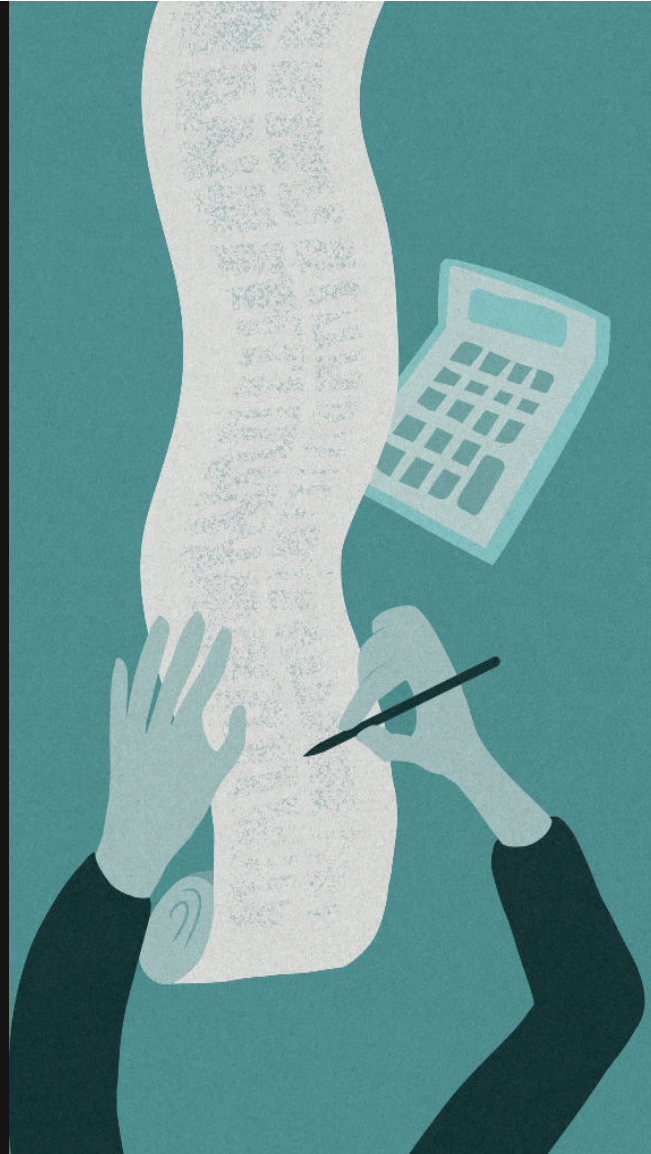


Grievance Policies & Procedures



Grievance Policy & Procedures

Basic Requirement



“A recipient **must adopt and, publish, and implement** grievance procedures consistent with the requirements of §106.45, and if applicable §106.46, that provide for the **prompt and equitable resolution** of complaints made by students, employees, or other individuals who are participating or attempting to participate in the recipient’s education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or” the regulations.

Grievance Policy & Procedures

Essentials

- ▶ Must be in writing
- ▶ Provisions related to respondents only apply when complaint alleges an individual discriminated
- ▶ No respondent when complaint alleges an institution's policy or practice is discriminatory




Double Feature

K-12 (All) & Higher Ed Sex Discrimination

- ▶ Requires basic structure for processing complaints
- ▶ Much more flexibility in designing that process

Higher Ed Sex-Based Harassment

- ▶ Limited to reports involving a student complainant or student respondent
- ▶ Looks more like 2020 Rules
- ▶ Additional notice requirements
- ▶ Additional opportunities to review evidence



**K-12
Sex-Discrimination +
Harassment
&
Higher Ed
Sex-Discrimination**
Section 106.45

K-12 Sex-Discrimination and Harassment

Basics

- ▶ Treat complainants and respondents equitably
 - ▶ *Decision-Point:* Whether to have confidential employees
 - ▶ *Decision-Point:* Whether to provide an informal resolution process



K-12 Sex-Discrimination and Harassment

Basics

- ▶ Must set, and abide by, reasonably prompt timeframes for “major stages of grievance procedures” (reasonable extensions for good cause)
 - ▶ *Decision-Point:* What timeframes will apply to your grievance process
 - ▶ *Decision-Point:* How will you count days?
 - ▶ *Decision-Point:* What will count as good cause for delay?
- ▶ Requirement to consult with a member of the IEP or 504 Team if C or R is a student with a disability



K-12 Sex-Discrimination and Harassment

Investigation / Determination

- ▶ Treat complainants and respondents equitably
- ▶ Title IX personnel (T9 Coordinator, Investigator, Decisionmaker, Appeal Officer, IR facilitator, confidential employees) cannot have a conflict of interest or bias
 - ▶ Decision-Point: Single-Investigator Model?
 - ▶ Decision-Point: How to assess credibility
 - ▶ Decision-Point: Whether and how to define consent in policy
- ▶ Objective evaluation of all relevant evidence



Grievance Process + for K-12 Sex-Based Harassment

For complaints of sex-based harassment, your grievance procedures must:

- ▶ Describe the range of supportive measures available to complainants and respondents
- ▶ List or describe the range of possible disciplinary sanctions and remedies the recipient may impose following a determination that sex-based harassment occurred



Grievance Process for Title IX Retaliation

For complaints of Title IX retaliation, a recipient must:

- ▶ Initiate its Title IX grievance procedures, or, as appropriate, an informal resolution process





Higher Ed Sex-Based Harassment

Section 106.46

Higher Ed
Sex-Based Harassment

Basic Requirements

- ▶ Must include all required provisions in policy for sex-discrimination
- ▶ Must apply to all complaints in which there is a student complainant or student respondent
 - ▶ *Decision-Point: How to address when students are employees*
- ▶ Think through definitions
 - ▶ *Decision-Point: How will you define consent?*
- ▶ Think through timeframes – as a whole and individually



1

Higher Ed Sex-Based Harassment

Coordinator Responsibilities

- ▶ Assess potential danger of sending notice of allegations to Respondent
- ▶ Assess need for emergency removal and administrative leave
- ▶ *Decision-Points:*
 - *What process will you use to make these assessments?*
 - *Will you send through already existing risk-assessment process?*
 - *How will Title IX Coordinator be involved?*
 - *If, when and how to involve care team (keeping in mind confidentiality requirements)*



2

Higher Ed Sex-Based Harassment

Investigation

Think About:

- ▶ *What restrictions will you place on advisor-of-choice participation in interviews and other non-meeting hearings? How will you enforce them?*
- ▶ *Allowing additional support persons? Under what circumstances?*
- ▶ *How will you accommodate witnesses with disabilities?*
- ▶ *What about translators for International students or employees?*
- ▶ *Will you allow expert witnesses?*
- ▶ *How much notice before interviews and other meeting? (And how will this impact overall investigation time frames?)*



3

Higher Ed Sex-Based Harassment

Concluding Investigation

▶ Access to Evidence

- *Will you allow access to evidence or report summarizing it?*
- *How will you provide access? Electronically? In your office? Will they be able to have or create their own physical copy?*

▶ Responses

- *How long will you allow them to respond? (how will that impact the overall investigation timeframe?)*
- *If holding a live hearing, parties must have access before hearing. Will you allow a response to that evidence before, during, or both?*
- *What protections will you implement to ensure privacy of records shared with parties?*



4

Higher Ed Sex-Based Harassment

Decision-Making

Think About

- ▶ *Single-Investigator model or separate decision-maker(s)?*
- ▶ *Whether to offer live hearings*
 - ▶ *Whether to offer live hearings for all or only certain sex-based harassment claims*

Keep in mind that constitutional due process requirements may mandate live hearings for certain claims for public institutions

- ▶ *If separate Q&A process, how will that work logistically? How many rounds of Q&A will you allow? How much time will this add to your overall timeframe?*



5

Higher Ed Sex-Based Harassment

Live Hearings

Think About

- ▶ *Will it be in-person or virtual? Same or separate rooms?*
- ▶ *Who will cross-examine parties & witnesses?*
 - ▶ *If decisionmaker, how will you allow for follow-up questions? How many rounds?*
- ▶ *Rules of decorum*



- ▶ Permissible Bases?
- ▶ Will appeals of supportive measures be captured in policy or in procedure?
- ▶ Who will serve as an "appropriate and impartial employee" to review supportive measure decisions?
- ▶ Students with disabilities

**K-12 + Higher Ed
(All Claims)**
Appeal
Decision-Points

Pregnancy & Parenting Policies



Pregnancy & Parenting Policies

Essential Elements

- ▶ Note that students are entitled to breaks during class to attend to "related health needs, expressing breast milk, or breastfeeding; intermittent medical appointments; access to online or other homebound education"
- ▶ Require employees to notify Title IX Coordinator when they learn a student is pregnant.
- ▶ Allow students to take leave for the greater of as long as medically necessary or as long as allowed under any other applicable student leave policy



Pregnancy & Parenting Policies

Prohibitions & Requirements

Must not:

Adopt/implement policy/practice/procedure that treats differently on the basis of:

- Sex
- Past/present/current/potential pregnancy or related conditions

Must:

- Make reasonable modifications to other policies and procedures if needed for pregnant and parenting students



Pregnancy & Parenting Policies


Essential Elements & Decision Points

- ▶ Identify Title IX Coordinator or Designee responsible for interactive process for student pregnancy-related accommodation requests.
 - *K-12: Will you handle accommodation requests centrally or designate someone at the campus level?*
 - *Higher Ed: Will you handle through your Title IX office or designate someone in your Section 504 office to handle?*

Notice of Allegations

- ▶ School's grievance procedures
- ▶ Sufficient information ***available at the time*** to allow the parties to respond
 - Identity of parties involved
 - Conduct alleged to constitute sex discrimination
 - Date and location of alleged incident
- ▶ Statement that retaliation is prohibited
- ▶ Statement that the parties are entitled to an equal opportunity to access the relevant evidence or an accurate description (with option to request the evidence)

Higher Ed Sex-Based Harrasment **Notice of Allegations**

- Everything in Notice of Allegations for Sex-Based Discrimination Complaint 
 - Presumption of non-responsibility
 - Opportunity to present not otherwise impermissible evidence to trained, impartial decisionmaker
 - Right to an advisor of choice
 - Access to relevant evidence *or* an investigative report
 - Provisions prohibiting knowingly making false statements or knowingly submitting false information during the grievance process
- Delayed Notice if resonable concern for the safety of any person as a result of providing the notice



Notice of Additional Allegations

- ▶ If school decides to investigate additional allegations about the respondent's conduct toward the complainant that are not included in the notice of allegations or if a complaint is consolidated, the school must provide notice of the additional allegations to the known parties



Higher Ed Sex-Based Harassment **Notice of Interviews and Meetings**

- Like under current rules, must:
 - Provide written notice of interviews and meetings (with specifics) with time to prepare or participate
 - Parties have same opportunity to advisor, but can limit role if equally applied
- Must allow parties same opportunity (if any) to have others in addition to advisors present during meetings and proceedings
- Provide access and opportunity to respond to report that summarizes relevant evidence
 - Provide access to evidence itself if requested by a party

Notice of Availability of Informal Resolution

- ▶ School may offer informal resolution with a trained facilitator
- ▶ Does not require a formal complaint
- ▶ School must provide notice of its availability with notice to complainant and respondent of grievance procedures
- ▶ Can encompass a broad range of dispute resolution strategies
- ▶ Cannot be offered when allegations involve an employee engaged in sex-based harassment of an K-12 student or when such a process would conflict with Federal, State, or local law
- ▶ Factors considered in determining whether to file initial complaint may be considered to determine whether IR is appropriate



Notice of Determination

- ▶ Notify the parties in writing of the determination of whether sex discrimination occurred and the rationale for the determination
- ▶ Notify the parties of the procedures and permissible bases for appeal



Notice of Dismissal

- ▶ Must promptly notify the complainant of the basis of dismissal
- ▶ If respondent has already been notified of the allegations, you must also notify the respondent of the dismissal and basis for dismissal
- ▶ Notice must include that a dismissal may be appealed



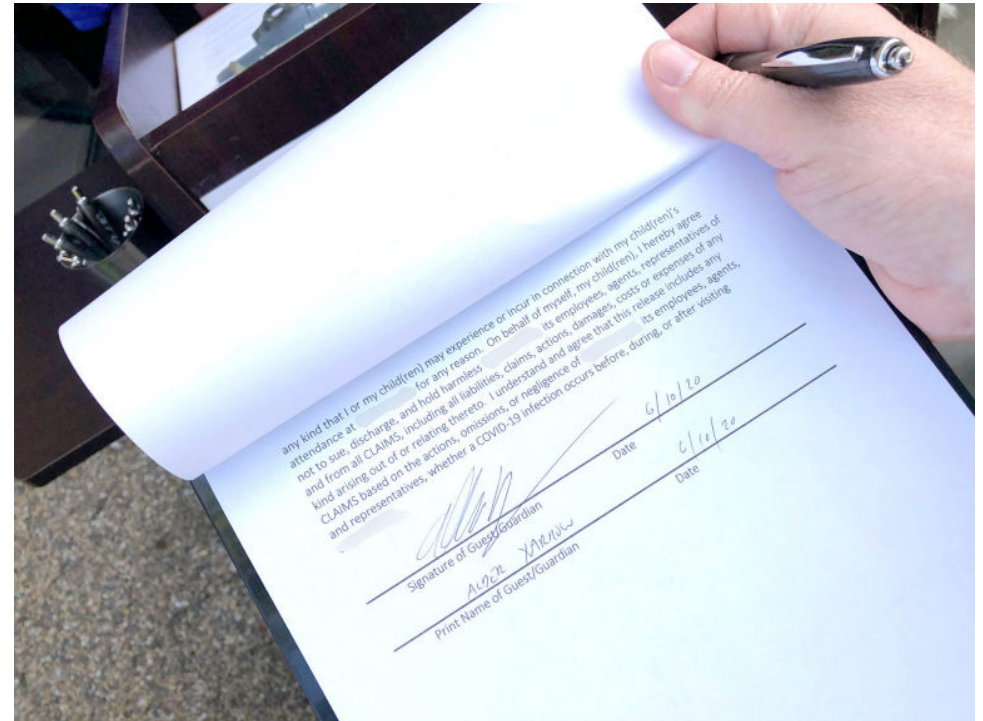
Notice of Appeal of Dismissal

- ▶ Any party can appeal dismissal
- ▶ Notify parties when appeal is filed
- ▶ Implement appeal procedures equally for the parties
- ▶ Appeal decisionmaker cannot be someone involved in the investigation or dismissal of complaint
- ▶ Appeal decisionmaker must be trained
- ▶ Parties must have reasonable and equal opportunity to make a statement in support of or challenging the dismissal
- ▶ Notify all parties of result of appeal and rationale for the outcome



Waivers

- ▶ Evidence protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee is impermissible, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality



Oral Complaints

- ▶ Create a form/process for the T9 coordinator to track oral complaints as well as all other written complaints
- ▶ That process should:
 - Memorialize the conversation with the complainant or individual who reported the conduct
 - Confirm the oral complaint, the allegations, and that complainant/reporter would like to initiate an investigation and have a determination
- ▶ A process for tracking information provided by confidential employee



Confidential Employees

- ▶ Confidential employees must explain three things to the person who is describing conduct that could reasonably be deemed sex discrimination:
 - Confidential status
 - How to contact T9 Coordinator; make a complaint
 - Possibility of supportive measures/IR
- ▶ Create a form/process for confidential employees to track and confirm they provided this required information



**Higher Ed
Sex-Based Harassment**

Written Determination

- Whether holding a ***live hearing or individual meetings***, postsecondary institutions must provide a written determination in all sexual harassment cases.
- Written determination must include:
 - ✓ Allegations
 - ✓ Policies & Procedures Used
 - ✓ Evaluation of Relevant Facts
 - ✓ Determination for Each Allegation
 - ✓ Sanctions & Remedies
 - ✓ Procedures and Bases for Appeal
- Must be delivered to parties simultaneously

Pregnancy & Related Conditions

Your Documentation





**What
Documentation
or Forms Will
You Need?**

Types of Documentation For Pregnancy & Related Conditions



1

Notice and Reporting

2

Accommodations &
Leaves

3

Lactation Spaces

Notice & Reporting

- ▶ Consider *if* and/or *how* you want to document that an employee provided Title IX Coordinator information to student who is pregnant or has a related condition
- ▶ How do you want the Title IX Coordinator to track and monitor notice received regarding pregnant students or those with related conditions?



Notice & Reporting

- ▶ Title IX Coordinator or designee will want to document conversation and provision of nondiscrimination obligations
- ▶ Title IX Coordinator or designee will want to document discusses regarding reasonable accommodations or modifications (much like documenting supportive measures)



Accommodations & Leaves

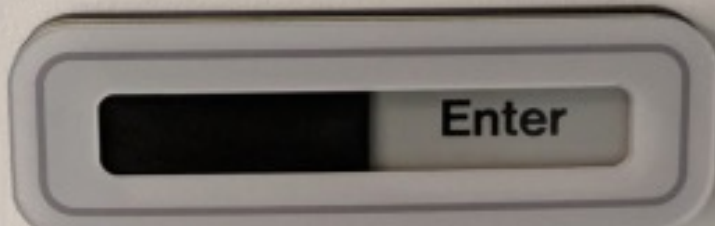
- ▶ Request for Accommodation form
- ▶ Documentation of interactive process
- ▶ Internal document of approval of request or denial of request and reasoning
- ▶ Notice regarding approval/denial of requested accommodation
- ▶ Documentation to confirm voluntary participation in an alternative program or class
- ▶ Leave of absence form
- ▶ Notice of rights regarding absence



Lactation Spaces

- ▶ Documentation for students and employees
- ▶ Documentation of reasonable modifications for expression of breastmilk
- ▶ Informational documents regarding compliant lactation spaces for students and employees

You can likely use existing PUMP Act documentation with slight changes!





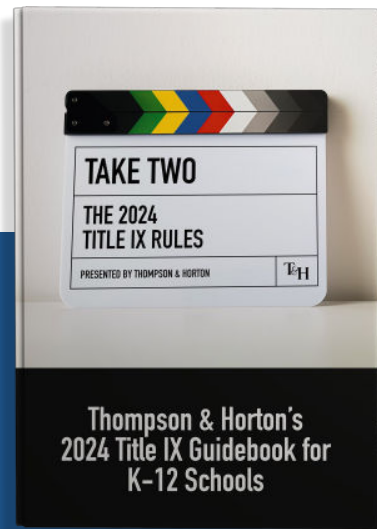


**No Need to
*Ring the
Alarm***

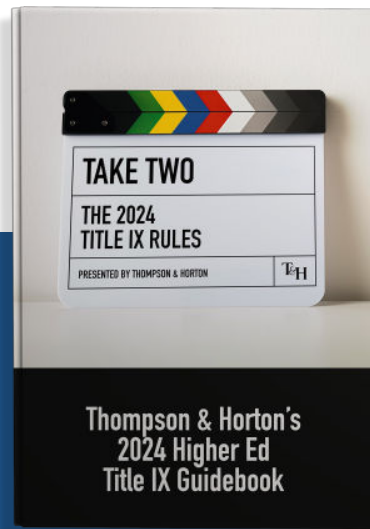


Title IX Administrators

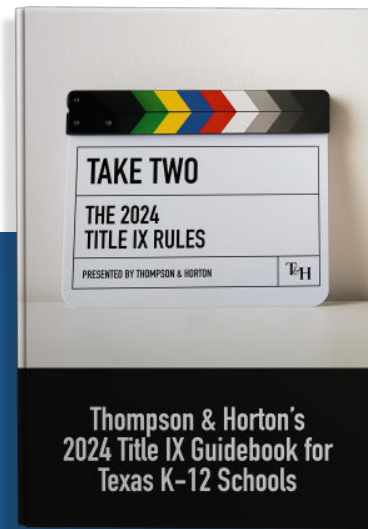
T&H Has You Covered



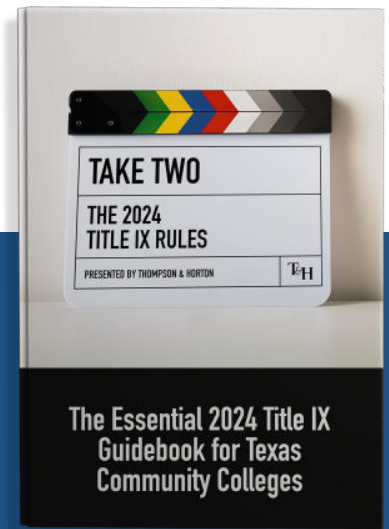
Thompson & Horton's
2024 Title IX Guidebook for
K-12 Schools



Thompson & Horton's
2024 Higher Ed
Title IX Guidebook



Thompson & Horton's
2024 Title IX Guidebook for
Texas K-12 Schools



The Essential 2024 Title IX
Guidebook for Texas
Community Colleges

Thompson & Horton's

2024 Title IX Guidebooks

THOMPSON & HORTON RESOURCES

Title IX Training

thlaw.com/titleix

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TAKE TWO
THE 2024
TITLE IX RULES
PRESENTED BY THOMPSON & HORTON

2024 Title IX Training and Resources

Thompson & Horton has K-12 and Higher Education training options to meet your needs, whether you need to train one Title IX coordinator, your entire Title IX team, administrators, all personnel, or your school board. We provide training for schools seeking initial compliance with the 2024 Title IX Rules, intermediate and advanced role training to help your Title IX team develop practical skills for responding to complaints of sex discrimination and sex-based harassment, as well as "add-on" courses that address key issues your institution may face when complying with Title IX.

Our training is available in-person, online via Zoom, or in a hybrid model. We offer the trainings à la carte or in packages. We can also work with you to create a customized training package to meet your institution's unique needs.

Thompson & Horton also has New 2024 Title IX guidebooks for K-12 schools and Higher Education institutions that provide analysis, tips, checklists, and forms for the 2024 amendments to the Title IX regulations.

For more information, you can contact your Thompson & Horton attorney or email us at titleIX@thlaw.com.



THOMPSON & HORTON RESOURCES

Title IX Leadership Alliances

K-12

4th Tuesday of the month

- ▶ Register at thlaw.com/k12alliance
- ▶ Email titleix@thlaw.com
- ▶ Use the QR code



Community College

Last Wednesday of the month

- ▶ Register at thlaw.com/ccalliance
- ▶ Email titleix@thlaw.com
- ▶ Use the QR code



4 Yr. College or University

Last Thursday of the month

- ▶ Register at thlaw.com/4yralliance
- ▶ Email titleix@thlaw.com
- ▶ Use the QR code







Coming Soon From
**Thompson &
Horton**



K-12 Lunch & Learn – Dallas

Lights! Camera! K-12 Action Plan!
May 1, 2024



Title IX Webinar for Higher Ed

Lights! Camera! Higher Ed Action Plan!
May 2, 2024



K-12 Lunch & Learn – Houston

Lights! Camera! K-12 Action Plan!
May 3, 2024



Title IX Webinar for K-12

Lights! Camera! K-12 Action Plan!
May 7, 2024

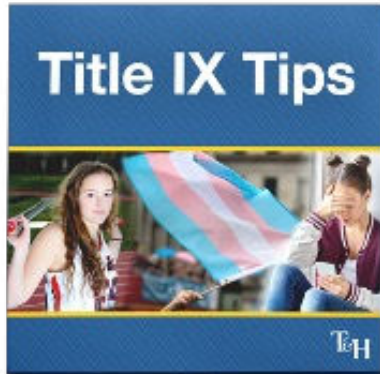


**DON'T
FORGET!**

UPCOMING WEBINAR

**Join us for the
fourth TacTIXs
Webinar on
May 29, 2024**

THOMPSON & HORTON RESOURCES



Blog

Title IX Tips

▶ titleixtips.com



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