



Association of
Title IX Administrators

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University of Mount Union Title IX Regulations Refresher Staff Training

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Title IX

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

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



Title IX Updates

Department of Education Updates

- Department changes include:
 - Significant staffing reductions, but increased enforcement in some areas
 - Closure of 7 of 12 OCR regional offices
 - Federal funding and oversight shifts
- Executive Order (EO): *Improving Education Outcomes by Empowering Parents, States, and Communities* (3/20/25)
 - Directed the Secretary of Education to “facilitate closure of the Department” and “return authority to the States and local communities”
- Civil Rights enforcement remains in Department of Education’s Office for Civil Rights (OCR), but other agencies (e.g., Health and Human Services (HHS) and Department of Justice (DOJ)) appear to be ramping up enforcement in certain areas
- Increased focus on Title VI

Rescinded Prior Guidance

Rescinds all guidance documents inconsistent with the EO or subsequent guidance including:

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQ Harassment in Schools
- Enforcement of Title IX - Based on Sexual Orientation and Gender Identity in light of *Bostock v. Clayton County*
- AG's memorandum "Application of *Bostock v. Clayton County* to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

Impact on DEI

Executive Order “Ending Illegal Discrimination and Restoring Merit-Based Opportunity (1/31/2025)”

- The purpose of this Executive Order is to ensure that agencies work to end illegal preferences and discrimination
- “Today, 60 years after passage of the Civil Rights Act, influential institutions have adopted and actively use dangerous, demeaning and immoral race and sex-based preferences under the guise of “diversity, equity and inclusion” that violate civil rights laws.”
- “These illegal DEI and DEIA policies also threaten the safety of American men, women and children by diminishing the importance of individual merit, aptitude, hard work and determination when selecting people for jobs and services.”
- All executive departments and agencies are to terminate all discriminatory and illegal preferences, mandates policies, programs, activities, guidance, regulations, enforcement actions and requirements to combat DEI preferences.

Dear Colleague Letter, Feb. 14, 2025

- Interpreted *Students for Fair Admission v Harvard* (U.S.S.Ct. 2023) to mean that any use of race must be necessary to achieve a compelling institutional interest.
- Stated that only two actions meet the compelling institutional interest:
 - Remediating past discrimination that violated the Constitution or a statute
 - Avoiding Imminent and serious risks to human safety (ex. prisons to avoid a "race riot")
- Stated: "If an educational institution treats a person of one race differently than it treats another person because of that person's race, the educational institution violates the law."

Dear Colleague Letter, Feb. 14, 2025

- Therefore, educational institutions are prohibited from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies and all other aspects of student, academic and campus life.
- Basically, educational institutions may neither separate or segregate students based on race, nor distribute benefits or burdens based on race.
- Institutions may not rely on non-racial information as a proxy for race (such as applying racial stereotypes or arguing social justice positions).

Lawsuits Halting DCL

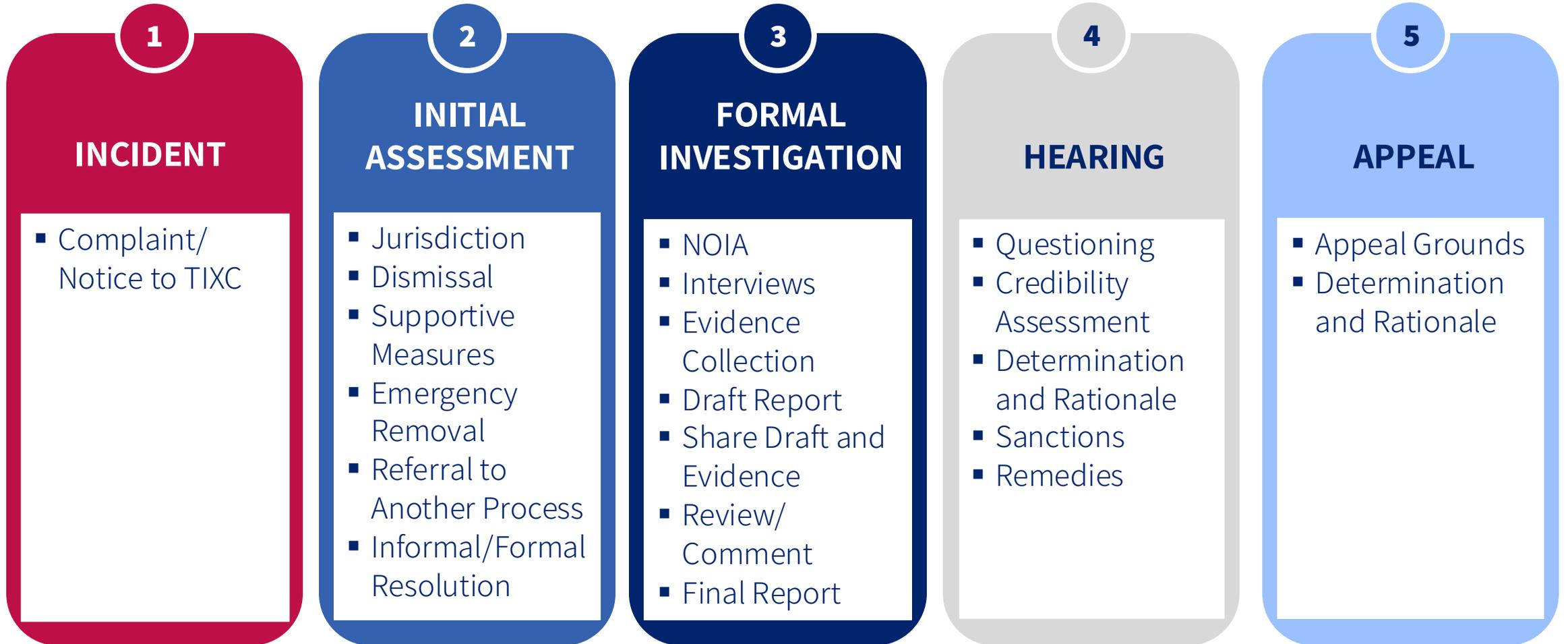
- Federal judges in New Hampshire and Maryland imposed injunctions against enforcement of the DCL, stating that it violated procedural standards and the First Amendment by failing to appropriately define DEI.
- The judges stated that the DCL is vague about what constitutes actions that could result in loss of federal funding, suggesting that schools must eliminate all vestiges of DEI to avoid even the possibility of funding termination.
- These actions removed the requirement to list all DEI related programs and certify they were being eliminated and provide to the government.
- Many/most schools engaged in retracting or rebranding their mission policies, scrubbing websites, eliminating offices

What This Means for Us

- These injunctions will create a pause on the chaos and provide institutions with time for them to demonstrate clearly in court how these mandates are unconstitutional and should be permanently stopped.
- It's a best practice to assess all DEI related programs and policies and create a comprehensive list of all potentially challengeable ones, with a plan to address the title, implementation, removal if required.
- Be prepared to defend any Affirmative Action programs.
- Institutions must ensure that any race-conscious initiative do not exclude, or advantage specific groups based on race, color, or national origin

Title IX Process Overview

Title IX Grievance Process Overview



Reports, Complaints and Notice

When is the Institution “On Notice?”

The institution is “**on notice**” of sexual harassment when a report is made to:

- **Title IX Coordinator (TIXC)**, or
- An **Official with Authority (OWA)**: any official who has authority to institute corrective measures on behalf of the Institution

Being “on notice” creates an institutional obligation to respond



Mandatory Reporting

- ATIXA recommends that institutions, by policy, designate **all employees** as **mandated reporters** (except for **confidential resources**) under Title IX
 - Ensures information gets to those trained to respond
 - Enables institution to best support individuals
 - Supports tracking patterns
 - Provides for simpler, uniform, and universal training and reporting
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy

Party and Witness Privacy Concerns

Privacy vs. Confidentiality vs. Privilege

1

PRIVACY

Statutory protection (FERPA) only allows disclosing records to those who need to know, but cannot guarantee confidentiality

2

CONFIDENTIALITY

Information protected by law as a part of the Title IX process. Information about a case only to be shared with those involved with the case

3

PRIVILEGE

The highest legal protection (attorney giving advice to a client or clergy providing pastoral advice); client/patient/parishioner controls the privilege

Title IX Scope: Sexual Harassment

Title IX Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Disparate Impact

Retaliation

Sexual Harassment

- *Quid Pro Quo*
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Title IX Jurisdiction & Initial Assessment

Jurisdiction

TIXC is responsible for conducting an initial assessment to determine Title IX jurisdiction:

- Does the alleged conduct, if proven, meet one of the definitions of Title IX Sexual Harassment?
- Status of the Complainant?
 - P/ATP
- Control over the Respondent?
- Does the institution have control over the context of the alleged harassment (program or activity)?
- Did the behavior occur in the United States?



Outreach and Intake

- After receiving a report, TIXC (or designee), should always reach out to the Complainant
 - Best practice and regulatory requirement
- **Outreach** includes:
 - Introduction to Title IX and staff
 - Reason for the outreach
 - Offer to meet/speak over the phone; include right to Advisor
 - Available resources and resolution options, including how to file formal complaint
 - Discuss supportive measures and resources
 - Explain options to report to law enforcement
 - Follow up in writing with resources and information

After Outreach and Intake

- Consider if new information affects jurisdictional assessment
- Implement any requested supportive measures and/or remedies

If formal complaint is filed:

- Determine whether to dismiss or proceed with formal investigation
- Consider whether **emergency removal** is warranted
- Evaluate whether complaint is appropriate for potential **Informal Resolution**

If no formal complaint is filed:

- Determine whether TIXC needs to sign a formal complaint
- Consider whether **emergency removal** is warranted

Supportive Measures

- Provided to parties throughout the process:
 - At no cost to the party
 - Individualized
 - Non-disciplinary, non-punitive
 - Protect safety of parties or environment, or deter sexual harassment
 - Restore or preserve equal access
 - Without unreasonably burdening other party
- Publish the range of supportive measures
- Avoid unnecessary disclosures about supportive measures
- Consult with disability services when appropriate
- If not provided, document the rationale for refusal

Supportive Measure Examples



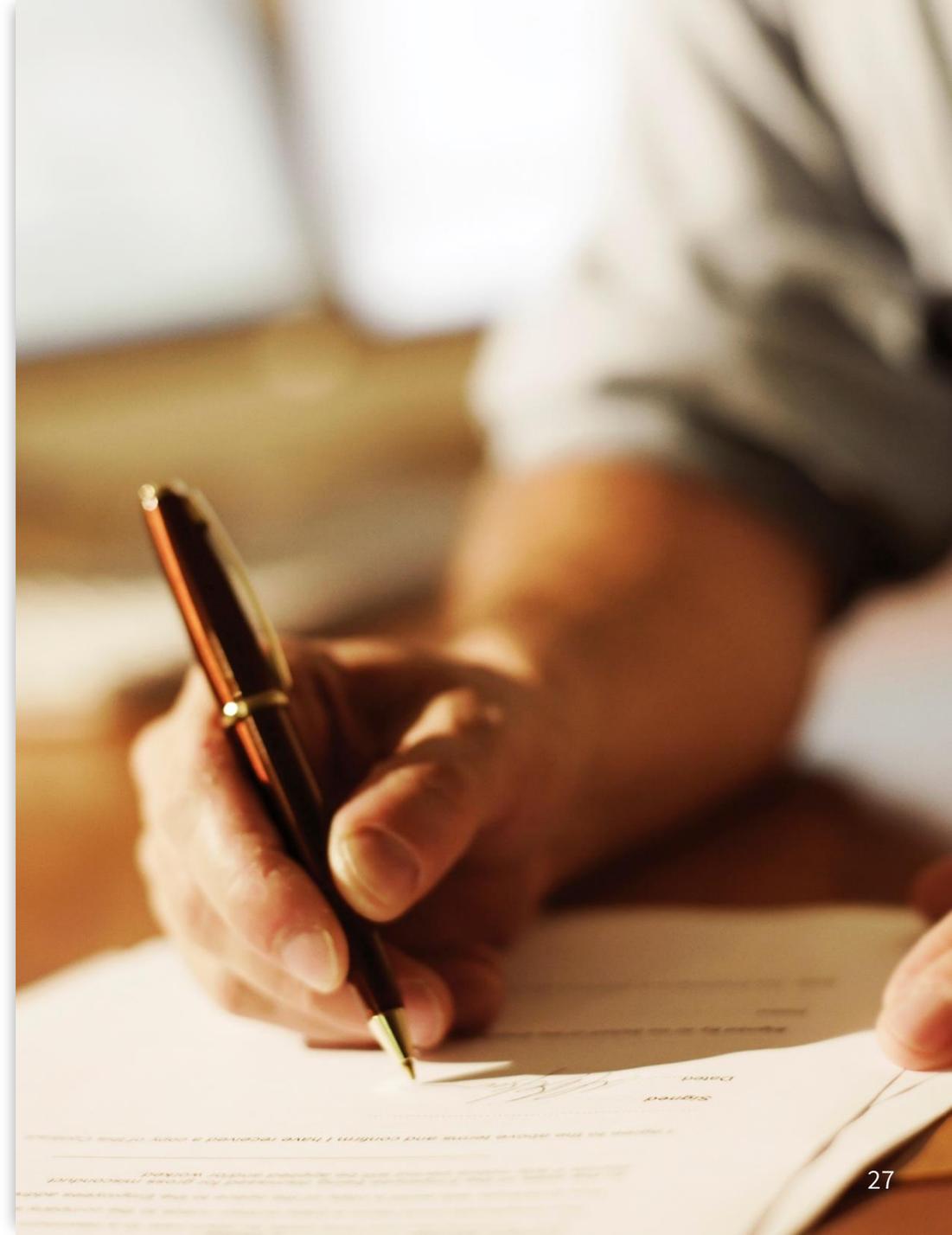
Emergency Removal

- Imposed upon Respondents on an emergency basis only
- Requires an individualized safety and risk analysis
 - Immediate threat that exists to the physical health or safety of any student or other individual
 - The threat arises from the allegations of Sexual Harassment
- Respondent entitled to immediate notice and opportunity to challenge



Administrative Leave

- May remove an employee Respondent using existing administrative leave procedures
- A lower bar than emergency removal



Informal Resolution

- Title IX permits **voluntary** Informal Resolution (IR)
- Not available for employee-on-student harassment
- IR is not defined by the Title IX Regulations
- At discretion of TIXC, at any time prior to a final determination
 - Likelihood of resolution
 - Power dynamics
 - Goals and motivation of the parties to participate
 - Complexity and timing of the complaint
- IR Facilitators must receive training, be free of bias or conflicts
 - ATIXA recommends IR Facilitators not serve in any other process roles

Informal Resolution, Cont.

- Procedural requirements:
 - Formal Complaint
 - Parties must receive written notice of the allegations, IR procedures, records created, and potential consequences
 - Parties' voluntary, written consent
 - Must still stop, prevent, remedy
- May withdraw from IR to start or resume Formal Grievance Process at any time



Investigation

Notice of Investigation and Allegations

- Notice of Investigation and Allegations (NOIA) letter
 - Sent to all parties, simultaneously
 - Must be sent prior to interviewing any party
- **The NOIA includes:**
 - Notice of the allegations and known details, such as identities of the parties
 - A description of the alleged conduct and relevant policy provisions
 - The date and location of the alleged conduct
 - Information about grievance procedures
 - Any Informal Resolution options

Investigation Report

Comprehensive investigation report for all Title IX complaints

- Required for all Sexual Harassment complaints
- Recommended for non-Sexual Harassment Title IX complaints (industry standard practice)
- Requires opportunity for equal access to all relevant evidence
- Shows Investigator's work
- Provides Investigators with a standard and consistent format
- Helps protect institution on complaints that may be subject to scrutiny



Parties' and Advisors' Review of Report and Evidence File

- Draft report summarizing all Relevant Evidence
- Directly Related evidence file must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the institution does not intend to rely
 - Include exculpatory and inculpatory evidence
- 10 + 10 rule
 - Investigator must:
 - Allow **minimum** of 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
 - Investigator sends the final investigation report to the parties and Advisors for review **minimum** of 10 days prior to the hearing

Decision-Making and Appeals

Decision-Making Under 2020 Regulations

- Under the 2020 Title IX Regulations, all postsecondary institutions must hold a **live hearing** to address Title IX Sexual Harassment allegations, unless resolved by IR
 - DM can ask relevant questions
 - Advisors can ask relevant questions on behalf of Parties
- TIXC and Investigator may not serve as DM
- Not required to use a live hearing for non-Sexual Harassment Title IX allegations (e.g., Disparate Treatment)

Live Hearings

- Questions must be asked by the parties' Advisors and/or DM(s)
 - If the party does not have an Advisor, the institution **must** provide an Advisor for the purpose of asking questions during the hearing, if the party wishes to ask questions
 - DM must determine whether a proposed question is relevant and permissible
- Hearing can be in one location or virtually through technology
 - DM and parties must be able to simultaneously see a party or witness when they are speaking/communicating
- Must create an audio or video recording or transcript and make it available to parties to inspect and review
- May impose reasonable decorum rules

Appeal Grounds

Must offer appeals on the following grounds:

1

Procedural irregularity that affected the outcome of the matter

2

New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter

3

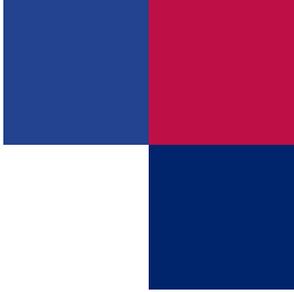
Conflict of interest or bias by the TIXC, Investigator, Decision-maker that affected the outcome of the matter

Institutions have the discretion to add additional appeal grounds



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Questions?



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