

# **Title IX Update**

**Tuesday, July 14, 2020**

**and**

**Wednesday, August 5, 2020**

**By: Taylor M. Baublitz, Esq. and Christopher L. Harris, Esq.**

**Agenda:**

**Introduction to Title IX**

**Key Provisions of New Title IX Regulations**

**Next Steps**

**Questions & Discussion**

After a long notice and comment process, new Title IX regulations were issued by the U.S. Department of Education (Department) on May 6, 2020. The new rules mark the first time the Department has established regulations under the gender equity law, Title IX, detailing what schools must do when dealing with sexual assault cases involving students. A lot has been written about how the new rules apply in college classrooms, parties and dormitories, but the new regulations also apply to elementary school playgrounds and high school sports programs. In fact, the regulations detail specific minimum responsibilities and requirements that apply to kindergarten through 12th grade.

The regulations comprise approximately 25 pages, and the preamble to the regulations comprises more than 2,000 pages. The new regulation comes after years of wide-ranging research, careful deliberation, and critical input from survivors, advocates, falsely accused students, school administrators, Title IX coordinators, and the American people, including over 124,000 public comments. Schools will be **required** to comply with the new regulations by **August 14, 2020**. This guidance will provide a high-level summary of the most crucial new requirements and some suggestions about initial response steps that the school may wish to consider moving forward.

The Department's recently commenced initiative on sexual assault in K-12 schools enhances the Office for Civil Rights' (OCR) enforcement of Title IX in elementary and secondary schools and strengthens the responsibility of schools to respond to incidents of sexual misconduct. This major initiative also builds on the Department's work to implement the "Pass the Trash" provisions of the Every Student Succeeds Act (ESSA), which prohibits elementary and secondary school administrators from shifting employees who sexually abuse students from school to school.

Over the last three years, OCR has closed a total of **172 sexual violence cases** with change, a **375% increase over the prior eight years** in the annual number of sexual violence cases closed with change.

### **Hypothetical:**

*Parents assert their son, Student X, was a happy kindergarten student for the first half of the year, when he began to act hostile and afraid of school. One day, Student X confesses that while he was in gym class, the teacher left the children unattended to get some equipment and another student, Student Y, pulled down his pants and licked his genitals. The school promptly learns about this and has a video of the incident. The parents, however only learn about this assault through Student X. After the incident, Student X was called into the office and made to watch the video with the boy who assaulted him. Student Y is disciplined. The parents further learn that Student Y has been sexually harassing Student X for two (2) months. It is later discovered that the classroom teacher reported concerns about this behavior to the school principal. What could the school have done differently here?*

This hypothetical is based on the real-life case *M.W. v. Shikellamy School District*, 2020 WL 3250974 (M.D. Pa. 2020). There, the court determined that the principal had the authority to institute corrective measures. Under the new regulations, once *any employee* has *actual knowledge* of the violation, and no corrective measures are taken, the school may be found liable for it. In the case at hand, the court found that the parents' allegation that the sexual harassment continued for two months is sufficient, if proven, to establish that the school exhibited deliberate indifference to the Title IX violation. The court further found this was sufficient to make a *Monell* claim of a policy or custom of failing to act on and deliberate indifference to a Title IX violation. Therefore, the complaint was allowed to proceed.

## **NOTES:**

### **How Big of a Problem is Sexual Harassment and Assault in K-12?**

- In 2011, the American Association of University Women (AAUW) found that 48 percent of grade 7-12 students reported experiencing sexual harassment. However, only 21 percent of grade 7-12 schools reporting having any allegations of sexual harassment at all.
- Another study uncovered 17,000 official reports of sexual assault in K-12 between fall 2011 and spring 2015. However, academics and state education officials estimate that the number is actually much high and that there is an undercount for three reasons:
  - Many attacks go unreported by the victim and witnesses;
  - Some states do not track the number of reports they receive (Only 32 states (and D.C.) track sexual assaults, and of those states, many only do so if the perpetrator was suspended or expelled); and
  - Opinions vary on what acts are considered “sexual harassment” or “sexual assault.”

### **Why are Incidents Underreported?**

- The sexual harassment and assault laws differ for K-12 and higher education schools. The Clery Act requires federally funded post-secondary institutions to track “campus crime statistics,” including incidents of sexual assault. K-12 is not required to do so under this act.
- Higher ed and K-12 schools are often lumped together when confronting “school-related issues.” However, unlike college students, children and young adults in K-12 must have access to education by law. K-12 schools must also consider that the perpetrator’s age will impact how accountable they are for their actions.

- These differing laws and differing requirements can make it confusing for school officials to know if they are checking all the boxes.
- No one knows the requirements—most K-12 school officials do not understand Title IX or how to comply with its requirements. School staff usually have received very little (if any) training.

### **Introduction to Title IX Details**

- **Title IX of the Education Amendments of 1972 (Title IX) is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities.**
  - It has been more than 45 years since enactment of Title IX.
  - Title IX states in part:
    - *“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....”*
  - The U.S. Department of Education Office for Civil Rights (OCR) is responsible for enforcing Title IX and investigating alleged violations. OCR is responsible for investigating cases of sexual violence and other types of sexual harassment, both of which are forms of sex discrimination prohibited by Title IX.
  - Title IX’s sex discrimination prohibition extends to claims of discriminatory bullying or harassment based on a student’s sex, including allegations of both opposite-sex and same-sex bullying or harassment, bullying or harassment based on students’ gender identity, and bullying or harassment based on a student’s failure to conform to traditional sex stereotypes.

### **NOTES:**

### **The Long Road to the New Regulations**

- **September 7, 2017:** Department of Education Secretary Betsy DeVos announces review and comment process
- **September 22, 2017:** OCR issued:
  - Dear Colleague Letter (2017 DCL) withdrawing 2011 DCL and 2014 Q&A
  - Q&A on Campus Sexual Misconduct (2017 Q&A)
- **November 16, 2018:** Proposed Regulations Posted
  - Officially published in Federal Register later in November, 2018
  - Fact Sheet and Summary also posted
- **May 6, 2020:** Final Regulations Posted
  - Officially published in Federal Register later in May 2020
- **August 14, 2020: Final Regulations Effective**

**Key provisions of the Department of Education’s new Title IX regulation:**

- **New Definition of Sexual Harassment Narrowed:**
  - Pursuant to the new rules, schools are required to use a **narrower definition** of sexual harassment.
  - Prohibited Conduct
    - Prohibited “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
      - An employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (i.e., quid pro quo)
      - Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity** (i.e., hostile environment); or
      - Sexual assault (as defined by Clery Act), or “dating violence,” “domestic violence,” and “stalking” (as defined by Violence Against Women Act (VAWA)).
  - This new definition of sexual harassment adopts the **higher standard** (meaning: harder to prove sexual harassment) articulated by the U.S. Supreme Court in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).
  - Previously, OCR advised that sexual harassment of a student by a student created a hostile environment if:
    - the harassment was severe, pervasive, or persistent, and
    - Interfered with or limited a student’s ability to participate in or benefit from school services, activities, or opportunities.
  - The previous administration's guidelines for schools, which were issued in a 2011 "Dear Colleague" letter, presented the broader definition of sexual harassment
  - While under the new regulations schools will be required to investigate the allegations in any formal complaint, they can also now dismiss (but address such misconduct through provisions in its own code of conduct) any allegations of conduct that do not meet this stricter definition of sexual harassment.
  - This legal change represents a critical change for many schools, insofar as it requires behavior to be severe **and** pervasive, as well as objectively offensive to a reasonable person.

**NOTES:**

- **Definition of “Program or Activity”**

- Schools must respond when harassment occurs “in the school’s education program or activity.”
- For K-12 purposes, the definition of “program or activity” has been expanded to include **“locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs”** (e.g. campus, field trips, athletic events, conferences, etc.).
- The new definition was put into place more for colleges and universities that have study abroad programs as it clarified that the sexual harassment must occur in the United States. Previously, the Department had construed this element broadly so that it impacted education-related activities in foreign countries via study abroad. The new definition, however, is still applicable for K-12 programs.
- While it is possible for schools to address sexual misconduct that occurs outside their education programs or activities, they are not required to do so and in some circumstances would be prohibited from investigating these claims. There are also restrictions that would prohibit a school from investigating online sexual harassment.
- Nothing in the final regulations prevents recipients from initiating a student conduct proceeding or offering supportive measures to students affected by sexual harassment that occurs outside the recipient’s education program or activity.
- Given this change, schools will have to decide whether to prohibit and investigate sexual misconduct and harassment that occurs outside more narrowly-defined “education program or activity.”

**NOTES:**

- **Designate Qualified Personnel**

- **Quiz: Can you name your school’s Title IX Coordinator or Compliance Officer?**
- Title IX regulations have always required recipients to designate an employee to coordinate the recipient’s efforts to implement the law. The final rule requires that recipients not only **designate but also “authorize”** this individual to coordinate the recipient’s compliance efforts. In terms of authorizing this individual it is recommended that the school board vote on this and update or, in some cases, create, any job description for that position.

- In addition, the rule **requires** the employee to be known as the “Title IX Coordinator.”
- Practically speaking, most K-12 schools do not have a full-time Title IX coordinator. Designated employees typically combine Title IX responsibilities with other assigned duties.
- Schools should consider adding “Title IX Coordinator” to the existing job title of the currently designated individual before August 14, 2020, when the final rules go into effect. In addition, schools should review the Title IX coordinators’ job duties to ensure they have sufficient authority and time to carry out this role.
- The school **must** notify all students, parents or legal guardians of elementary and secondary school students and employees, the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.
- Important to note, the person who investigates a sexual harassment case **cannot be the same person** who decides whether the accused student is responsible.

**NOTES:**

- **When a Response is Required: Actual Knowledge**

- The Department narrowed the scope of when a school must respond to allegations of sexual misconduct.
- Previously, the Department mandated a broad definition for who on an institution’s campus was a “responsible employee” who had an obligation to report suspected sexual misconduct.
- Under the new regulations, schools are required to respond when they have “**actual knowledge**” (defined as notice to the Title IX Coordinator or an official who has authority to institute corrective measures of sexual harassment on behalf of the school) of a complaint of sexual harassment (any report to any elementary/secondary school employee).
- Thus, if sexual harassment is “so pervasive” that some employee “should have known” about it, it is highly likely that at least one employee did know about it and the school is charged with actual knowledge.
- The new regulations protect K-12 students by requiring elementary and secondary schools to respond promptly when **any** district employee has notice of sexual harassment (teachers, guidance counselors, bus drivers, etc.). This replaces the former requirement where a “responsible employee” had an obligation to report.

- Schools must offer clear, accessible options for reporting sexual harassment, verbally or in writing, including by email or by telephone.
- Anyone can report, including survivors, parents, friends, or bystanders.
- While many states already have mandatory reporting statutes for schools, the new Title IX regulations essentially make reporting a federal requirement (as a result, schools should consider training all employees even though the regulations do not explicitly require it).
- Schools must prepare for a broader response obligation. Specifically, once a school's response obligations are triggered, the Title IX Coordinator must promptly contact the complainant to discuss supportive measures, consider the complainant's wishes regarding "supportive measures," and explain the process for filing a formal complaint.

**NOTES:**

**Hypo:** *A sixth grade teacher, who was also the girls' softball coach, was accused of and later admitted to having sexual relations with a then sixteen year old former student. The parents allege that the district had actual notice that the teacher posed a substantial danger to students, based on the fact that several school employees were told (over a period of time) about inappropriate behavior by the teacher directed towards other students. **Based on the following facts, if you were the judge hearing this case, would you find that the district had actual knowledge that the teacher was harassing the student, or that he posed a substantial danger to students?***

- A. Another district employee saw the sixteen year old student at the teacher's house while he was washing her car.
- B. Ten years ago, the teacher was accused of grabbing a student's breast; however, the Principal investigated the matter and found the accusation to be unconfirmed.
- C. A former student told the Assistant Superintendent that the teacher had inappropriately touched her and commented on her body, thirty years ago.
- D. More recently, there were several complaints made by the parents of girls on the softball team who allege inappropriate and sexually suggestive comments were made by the teacher, including:
  - That the outfield was "wet and mushy like sex."
  - He placed softballs in the pockets of his jacket and shook them "like referring to his testicles."

- He said to one of his players that “when she ran she needed to put those away,” because “there are horny boys around here.”
- One player accidentally walked into his coach’s office while he was changing and saw him in biking shorts. He told her, “What? You never saw anything like this before?”
- **Investigative Requirements**
  - Schools are required to start an investigation with the accused having a criminal-like presumption of innocence.
  - The new regulations codify additional investigative requirements. For example, after a student reports an assault or a harassment covered by Title IX, the school must tell the students involved and their parents **in writing** about the allegations and the evidence that is gathered.
  - An accused student must be given at least **10 days** to respond to the complaint.
  - Next, the investigator must create an investigative report and send the report to each party for review and written response, at least 10 days before the hearing or before the school’s determination regarding responsibility.
  - Notice must also go to the accused perpetrator. Upon receipt of a formal complaint, the school must provide written notice of **all** allegations to **all** known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Additionally, if in the course of an investigation, the recipient decides to investigate allegations about the respondent or complainant that were not included in the original written notice, notice of the additional allegations must also be provided in writing to the known parties.
  - If the school decides to punish a student for a sexual assault or harassment allegation, it must inform the victim in writing, something many schools had previously resisted doing.

**NOTES:**

- **New Procedural Requirements**

- Parents or guardians of K-12 students are able to file complaints on behalf of their children.
- The new regulations also specify the school has the burden of proof. Schools are **required to select one of two standards of evidence**, the preponderance of the evidence standard or the clear and convincing evidence standard—and to apply the selected standard **evenly** to proceedings for all students and employees, including faculty. This is a new and higher standard than what schools used previously.
  - **Note: Preponderance of the evidence requires that evidence be “more likely than not” to prove the matter at hand (i.e. 51%)...Under the clear and convincing standard, the evidence must be substantially greater than a 50% likelihood of being true.**
- A school can utilize either standard, however, it may only utilize the “preponderance of evidence standard if the school “uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction.”
- The final Title IX regulations removed some of the most controversial measures of the prior guidance at the K-12 level and will not require live hearings in student discipline cases for sexual assault. The originally proposed “live hearing” process is not mandatory, but still is an option that a school could choose to utilize as part of its Title IX investigative process.
- With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the school must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- There is flexibility with whether the party submits written questions, etc. The school just has to afford each party the opportunity to do so if they wish.
- A school **must** offer both parties the right to appeal the decision.

**NOTES:**

- **New Scope of Responsibility**

- The new regulations specify the school’s responsibilities and when schools **must** dismiss formal complaints. After receiving a formal complaint,

- districts must conduct a formal investigation or, in limited circumstances, offer an informal resolution process.
- A school may not require the parties to participate in informal resolution and may not offer informal resolution unless a formal complaint is filed. At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint.
  - Schools **must dismiss** a formal complaint if: 1) the conduct would not constitute sexual harassment, under the new definition, or 2) if the conduct did not occur in a school's function or 3) in the United States. If the school dismisses the formal complaint, it may still take action under its code of conduct (such areas may include bullying, intimidation, and harassment, generally).
  - The school **may** dismiss a complaint if 1) the complainant notifies the Title IX Coordinator, in writing, that the complainant would like to withdraw, 2) if the accused is no longer enrolled or employed by the school, or 3) if the specific circumstances prevent the school from gathering sufficient evidence to determine responsibility.

**NOTES:**

- **New Supportive Measures Requirement**

- The new regulations establish a “first response” protocol on the part of the Title IX coordinators that was not required previously.
- Specifically, if anyone reports sexual harassment through any method, the Title IX coordinator or designee must:
  - 1) promptly contact the complainant to discuss the availability of supportive measures,
  - 2) consider the complainant's wishes with respect to supportive measures,
  - 3) inform the complainant of availability of supportive measures with or without filing a complaint, and
  - 4) explain to the complainant the process for filing a formal complaint.
- While many of these steps are following by many institutions already, the regulations now make them **mandatory**.
- The supportive measures that must be offered are measures designed to: restore or preserve access to the school's education program or activity without unreasonably burdening the other party, protect the safety of all parties and the school's educational environment, and deter sexual harassment.

- Schools must provide “supportive measures” to students, with or without a formal complaint, which may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class reassignments to avoid sharing a classroom with the accused student, or mutual restrictions on contact between the parties.
- The supportive measures should be “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge” to the complainant and, as applicable, to a respondent as well.

**NOTES:**

- **Recordkeeping**

- Schools will have to keep written records of actions taken in response to sexual misconduct reports for at least **seven (7) years** under the regulations.
- This obligation applies even if the students have graduated.
- These records may include: investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken, including supportive measures.
  - **Reminder: This is evidence to defend against later claims of “deliberate indifference” or a policy, practice, or custom of not properly responding to complaints.**
- Records should document in each instance that the recipient’s response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the education program or activity.
- If a recipient does not offer supportive measures in response to a report, the recipient’s records should document why the response was not clearly unreasonable under the known circumstances.
- In addition to the 7 year retention period, for materials used to train Title IX coordinators, investigators, decision makers, and any employee designated to facilitate an informal process, recipients must also post the training material on their websites, or, if a recipient does not maintain a website, otherwise make the materials available to the public. Additionally, it will be important to examine and update any record retention policy currently in effect.

**NOTES:**

- **Employment Issues**

- Although the Department has maintained relatively generic and uncontroversial regulations prohibiting sex discrimination on school campuses for many years, the new regulations break new ground by requiring that all of the procedural requirements referenced above, including those requiring hearings with live cross-examination by advisors in covered sexual harassment cases, apply to reports that employees have harassed other employees or have harassed students.
- This development, will require substantial revisions of employee handbooks and agreements to ensure that institutions can follow this mandate while also not violating other employment laws, collective bargaining agreements or other contractual agreements.

- **Potential Legal Battles and Issues**

- Employment discrimination comes within the prohibition of Title IX. Title VII applies to employment discrimination against any individual with respect to their compensation, terms, conditions, or privileges of employment “because of ... sex.” Sexual harassment is included under the language of Title VII prohibiting employment discrimination’s “because of ...sex.”
- In the Third Circuit, a potential plaintiff can bring suit for discrimination under Title VII, and/or discrimination under Title IX.
  - Title VII workplace standard (severe or pervasive conduct creating a hostile work environment).
- When there are students involved (student allegation against an employee), there may be other obligations: such as child abuse reporting.

**Hypo:**

*Teacher A (female) tells Principal that Teacher B (male) has been “really creepy.” By way of example, Teacher A explains that Teacher B has followed, subscribed, and friend requested Teacher A on all forms of social media. In addition, Teacher B messages Teacher A on each social media platform every morning to wish her a “good morning;” likes to say, “don’t take this the wrong way, but if I wasn’t married I would definitely go on a date with you;” and is always telling Teacher A that her “pants look great, especially from the back.” Principal tells Teacher A that he will personally take care of the issue because he has been properly trained under Title IX.*

*Principal calls Teacher B in his office and says the following: “Teacher B, there has been a complaint made against you alleging harassment in the workplace. I have already spoken with Superintendent and we agreed that it’s probably true, seeing as how you’re a guy and*

*she's a woman and #MeToo. So, we are going to have to immediately suspend you without pay and recommend the Board terminate you from your position."*

*Are there any issues?*

- **Tips for Employee Investigations:**

- Consider whether it's necessary to place the alleged perpetrator on leave. Districts have the authority to immediately place the perpetrator on paid administrative leave without providing a meeting or any other due process.
  - Confiscate laptop/iPad and disable technology; even if you don't have any reason to believe they contain evidence of misconduct.
- Consider whether you have any mandatory reporting obligations.
  - Police (immediate reporting under Safe Schools Act)
  - Children & Youth Services (immediate reporting under Child Protective Services Law)
  - PDE (15 day reporting under Educator Discipline Act)
- Notify the Title IX Coordinator and/or Applicable Compliance Officers (Title VII Coordinator)
- If the employee is placed on leave, pending additional investigation, issue a letter to the employee documenting the status. **Important to note: while normal employee investigative letters will usually contain a confidentially notice (you are specifically directed not to discuss this incident with anyone except your union representative) Title IX investigations CANNOT restrict the parties from discussing the allegations OR gathering evidence.**
- Review the applicable policy(ies) before you launch the investigation. Depending on the scenario, Board Policy may dictate that the interview is conducted in a specific sequence and manner. For example, in a complaint involving alleged sexual harassment, your policy likely contains a specific complaint procedure involving the compliance officer.
- Planning for the investigatory interview.
  - For the alleged perpetrator, provide prior written notice of the interview and a concise statement of the allegations. There should be no dispute about whether the employee was provided with appropriate notice of the allegations.
  - The investigatory interview is often conducted by the principal or compliance officer, and the results of the interview are later submitted to the Superintendent for consideration of possible discipline. Remember Weingarten rights. The alleged perpetrator has a right to bring a union representative to the interview.
  - Consider bringing a court reporter to the investigatory interview, especially for the interview of the alleged perpetrator.
    - Districts have an absolute right to bring a court reporter to investigatory interviews. *South Middleton Education Association PSEA/NEA v. South Middleton School District, PERA-C-12-369-E (2014).*

- The presence of a court reporter can assist in the truth-gathering process and encourage the other party to provide more cautious and complete answers.
- With a verbatim transcript, you will not have to rely on notes. Even the best note taker cannot capture everything. It's worth the extra expense.
- A verbatim transcript can be very helpful in future proceedings such as Loudermill meetings, dismissal hearings, etc. It can be used to correct contradictory statements and refresh memories.
- A transcript can also prove that an interview was conducted properly and fairly in the event there are accusations of wrongdoing.
- Schools must dismiss allegations of conduct that do not meet the Final Rule's definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate. This will be important to remember – **just because the conduct did not meet the definition under Title IX does NOT mean it won't meet the definition under Title VII. Remember, there are two standards now. You might recognize that it might not meet the standards of professional conduct, even if not Title IX or VII implications.**
- Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.

#### NOTES:

- **New Training Requirements**
  - **Quiz: When was the last time you were trained on Title IX regulations?**
  - Before the changes, Title IX already required schools to train certain personnel (Title IX coordinators, investigators, decision-makers, any person who facilitates an information resolution process) on the law.
  - The new regulations, however, identify new training topics, including on the regulation's *new* definition of sexual harassment and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias.
  - Moreover, schools must now train decision-makers on how to conduct live hearings — including what questions and evidence are relevant — and train investigators on how to create an investigative report that fairly summarizes relevant evidence.

- Schools must also make all training materials publicly available. Training materials must be posted on the school's website and should include:
  - How to conduct hearings virtually
  - Definitions of prohibited conduct, including harassment
  - How the processes—formal or informal—work
  - That the process is impartial, will be free of bias and conflicts, and will not prejudge the facts for either side
- Overall, the new regulations increase the obligations K-12 schools have for addressing sexual harassment. The stakes are high: the Department can require schools to prove their compliance with Title IX and withhold federal financial assistance for non-compliance, regardless of whether they have made any finding of sexual harassment.
- There is no requirement on how much training needs to be done or how often. It's obviously important for the school to maintain good hygiene when it comes to Title IX training, so a suggestion would be to review every 1-2 years. In terms of a deadline, the new regulations take effect August 14, 2020, so it is imperative for schools to take note of the changes now and make sure they receive some sort of training as soon as possible to make sure it is complying with the requirements.
- **Takeaway:** training is a proactive response. Every school should assume that some form of sexual harassment will occur next school year and need to be proactively ready with trained staff. Further, training is also a measure demonstrating a policy, practice, or custom of addressing these allegations seriously, and that the culture is of reporting, too.

**NOTES:**

- **Next Steps**

- Schools will need to decide very soon how broadly they wish to prohibit sexual misconduct.
- Those schools that choose to prohibit sexual misconduct that falls outside the narrowed definition of sexual harassment for Title IX purposes must then decide whether they will utilize Title IX-compliant procedures or other procedures to address sexual misconduct that is not covered by Title IX.
- A school's decisions on those points will drive its next steps in the policy and procedure development process.
- Beyond that, schools will have to consider how best to adapt their current policies and procedures to the new requirements. It is important to recognize now that substantial policy and process revisions will be necessary.

- Specifically, it will be important for the schools to look at policies 103 (Nondiscrimination in School and Classroom Practices), 248 (Pupil Unlawful Harassment), 348 (Employee Unlawful Harassment) and 800 (Records Management).
- It will also be important for schools to look at their Code of Student Conduct which may prohibit generic forms of harassment or bullying and require a response.
- It is anticipated that revised PSBA policies incorporating changes required by these new final regulations will be issued by mid-summer.