

Slide 1

**The New Title IX Final Regulations:
What You Need To Know To Stay In Compliance**


Day 1



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Week 1 Program 

Day 1: (Today)	Day 2: (Tomorrow)
A. The Intersection of Title IX and VAWA	A. General Requirements
B. Title IX Background	B. Informal Resolution Process
C. The New Title IX Regs: What Changed?	C. Subsequent OCR Guidance

*This presentation is for general informational purposes only; it is not intended to be legal advice. Participants should consult with their general counsel before implementing any changes.

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Introductory Poll 

Choose the response that best describes you. I am attending this webinar series because:

- I am an educator/administrator/counselor employed in a school; grades k-12 (public or private).
- I am an educator/administrator/counselor employed in a college or university (public or private).
- I am employed by a community organization whose clients are affected by Title IX in schools. (advocacy)
- I am employed in a position (non-advocacy; ie., court administrator, etc.) that often deals with Title IX related issues. (eg., sexual assault, domestic/dating violence and stalking)
- I have no idea. I was "voluntold" by my supervisor, but I'm sure there's a good reason.

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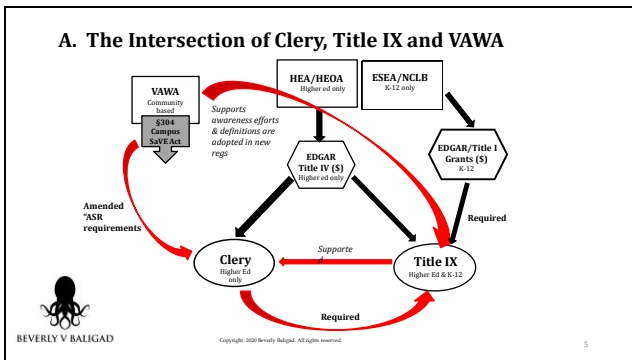
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Day 1

- A. The Intersection of Title IX, Clery and VAWA
- B. Title IX Background
- C. The New Title IX Regs Overview

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Elementary and Secondary Education Act (ESEA)



- A. Purpose
- B. Enforcement agency (Jurisdiction)
- C. Applies to?
- D. Relevance to institutions
- E. Non-compliance

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**Jeanne Clery Disclosure of Campus Security Policy and
Campus Crime Statistics Act (Clery Act)**

- A. Purpose of the Clery Act
- B. Enforcement agency
(jurisdiction)
- C. Applies to?
- D. Relevance to institutions
- E. Non-compliance





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**The Federal Laws: Violence Against
Women Act of 1994 (VAWA)/Campus
Safety Violence Elimination (SaVE) Act**

- A. Purpose of VAWA
- B. Enforcement agency
(jurisdiction)
- C. Application to Higher Ed
(specifically Section 304)
- D. Relevance to institutions
- E. Non-compliance



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[Some] VAWA Sections: A Broader Understanding

Title I: *Enhancing Judicial and Law Enforcement Tools to
Combat Violence Against Women*

Title II: *Improving Services for Victims of Domestic Violence,
Dating Violence, Sexual Assault and Stalking*

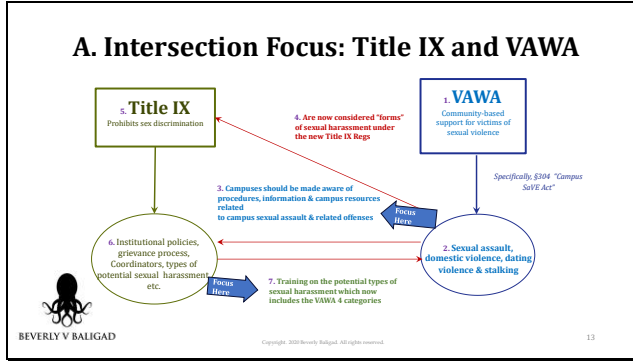
Title III: *Services, Protection and Justice for Young Victims
of Violence*

Title IV: *Violence Reduction Practices*



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But here's difference:

Title IX focuses on the policies and processes available to Complainants; "training" of individuals who have responsibility within the Title IX processes, and understanding different types of sexual harassment as a means to address sex discrimination on campuses.

***It is policy and process centered.**

VAWA/Campus SaVE Act focuses on the "programming and awareness" efforts regarding sexual assault, domestic violence, dating violence, and stalking.

***It is very "victim needs" centered.**

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Important Intersections

- A. Purpose of Title IX (policy, process and training) and VAWA (programming and awareness) are different
- B. Title IX focuses on processes to address potential forms of sex/gender based discrimination, & address & end discrimination on campus if found
- C. Under the new Title IX regs, the new sexual harassment "types" were adopted using VAWA (Campus SaVE Act-Section 304) terminology
- D. Rape shield laws and legal privilege are now recognized under the new regs
- E. Due process, conflict of interest and unbiased requirements are also required

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B. Title IX Background

- Federal civil rights law forbidding discrimination based on sex or gender in programs receiving federal funding (spending power)
- Co-authored and sponsored by Hawaii's own Patsy T. Mink (D-HI)
- Passed in 1972 as part of the Education Amendments; was later known as the "Patsy T. Mink Equal Opportunity in Education Act"
- Wording is similar to wording used in the ADA/Section 504
- Applies to students, employees of the institution and 3rd parties or visitors



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Title IX prohibits sex discrimination in:



- (not just) Athletics
- Programs
- Employment
- Admission
- Student activities
- Virtually, every/any service provided at an institution
- Processes and procedures



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TITLE IX Sports Illustrated

“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...”

So, what would you need to do in order to be in “compliance” with Title IX?



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—JUNE 23, 1972


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3 Ways ED-OCR Accomplishes its Mission:

- ✓ Investigate & resolve complaints regarding Title IX when the complaint involves “recipients”
- ✓ Compliance reviews
- ✓ Provide technical assistance




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ED - OCR’s Jurisdiction



- Colleges and universities
- State education agencies
- Elementary and secondary school systems (public and private)
- State vocational rehabilitation agencies



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Potential Liabilities/Issues for Title IX Non-compliance

- Threat of law suits (injunctions & damages)
- Threat of review by OCR (institutional “mad scramble”)
- Threat to an institution’s reputation
- Threat of loss of **all** federal funding
- For most folks, the inevitable “voluntary resolution agreement” (302)



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Franklin v. Gwinnett (1991)

- Background
- Issue: Can an implied right of action under Title IX result in monetary damages?
- Court held: Yes, however, there was no legislative guidance as to the limit on the damages, if any. Also, this case established that sexual harassment constituted sexual sex discrimination under Title IX



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Gebser v. Lago Vista (1998)

- Background
- Issue: Can damages be recovered if the institution had no actual notice of the discrimination and is deliberately indifferent?
- Court held: no damages under Title IX unless school official who has authority to take corrective measures has "actual notice" & is deliberately indifferent (legal standard)



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Davis v. Monroe Cty. Bd. (1999)

- Background
- Issue: Can a school Board be held liable for student on student harassment?
- Held: Yes, but only when the school acts with deliberate indifference when the sexual harassment is reported and the harassment is so severe, pervasive, and objectively offensive that it deprives the victims access to an education.




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Remember this? 5 P's of Title IX Compliance (pre- Final Regs)



- P**olicy
- P**rocess
- P**eople
- P**rofessional Development*
- P**rogramming*

*These were implied; not express.
There are changes in the final regs.




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5 P's of the New Title IX Regulations Puzzle



POLICY	PROCESS	PEOPLE	PROFESSIONAL DEVELOPMENT	*PROGRAMMING
2. New Definitions 3. General Requirements	3. General Requirements 4. Notifications 5. Investigations 6. Hearings	3. General Requirements 6. Hearings	3. General Requirements	3. General Requirements




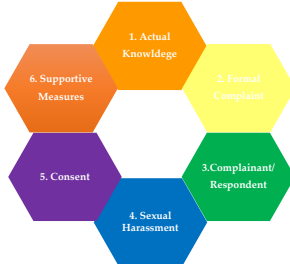
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New Definitions



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New General Requirements includes:

- When an institution has received notice
- When it may be required to respond to an incident regarding sexual harassment
- When and how a student who poses an “immediate threat” (under the Title IX process) may be removed
- ...and more!



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New Notification Requirements

- Requirements must be in writing to both parties
- What must be included in the notifications to the parties
- When the information needs to be sent
- Who can participate in the process
- ...and more!



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New Investigation Procedures

- Who cannot be an investigator
- How the investigator must conduct their investigation
- Role of the investigator
- Evidence that may or may not be used
- What happens with the evidence once it is collected
- Who does the evidence need to be sent to for review
- ...and more!



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New Live Hearing/Hearing Procedures

- Who is required to hold a "live hearing"
- What must happen before the hearing occurs
- Who can be a decision maker or on a hearing panel
- Types of questions that can/cannot be asked
- Who can attend the live hearings
- ...and more!



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New Appellate Requirements

- Who cannot serve as an appellate officer
- Basic reasons for why an appeal will be granted
- Who can appeal
- What information must be provided in the appeals decision letter



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New Recordkeeping Requirements

- What information needs to be kept by the institution?
- How long does the information need to be kept?
- In what format will the information need to be stored?



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New Training Requirements

- Who will need to be trained on the campus?
- What types of information will they need to be trained on?
- Where will the training powerpoints be stored and who can be able to see them?



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Mahalo!

Any Questions?

End of Day 1 of 4



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