



**GRAND RIVER** | SOLUTIONS



# 2022 Draft Title IX Regulations

A Summary Session for The ASCA

September 6, 2022

# About Us

## Vision

We exist to help create safe and equitable work and educational environments.

## Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

# Meet Your Facilitators



**Martha Compton**

*She/Her*

Director of Strategic  
Partnerships and Client  
Relations



**Kateeka Harris**

*She/Her*

Senior Solutions Specialist



**Andrea Stagg**

*She/Her*

Director of Consulting  
Services

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## REMINDER

Continue to follow current policies and procedures consistent with the 2020 Final Rule and state law



# Overview of Topics

1

**Scope Clarity (& Expansion)**

2

**Definitions**

3

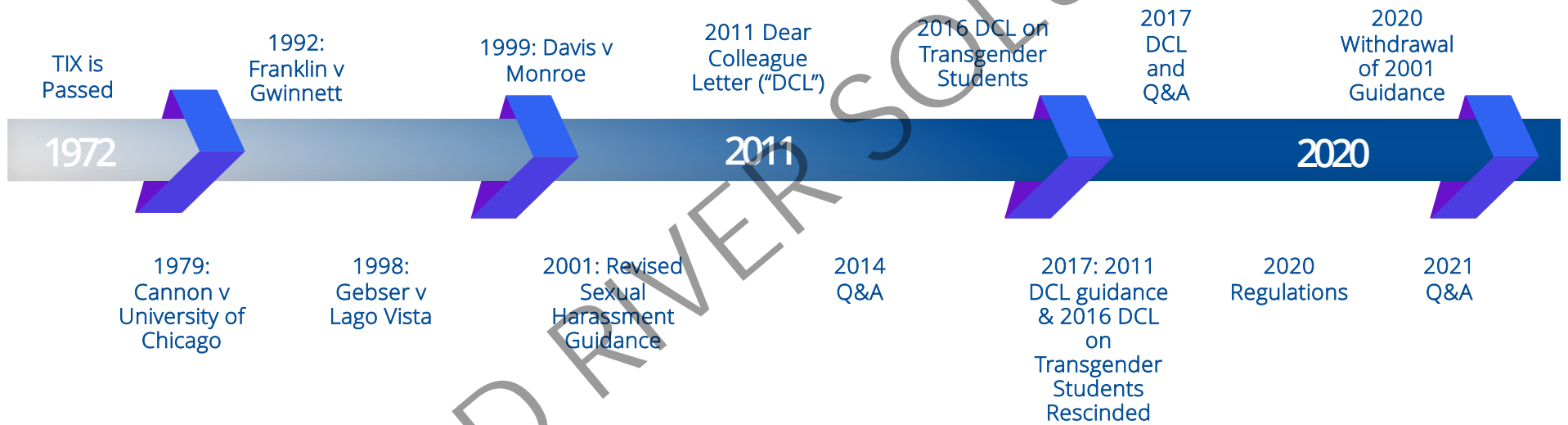
**Procedural Updates**

4

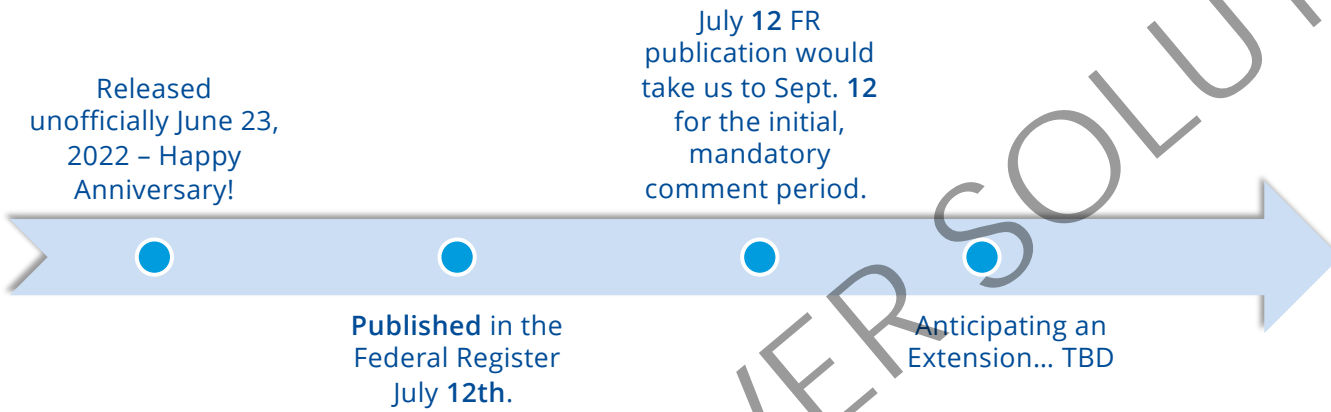
**So Much More**

# The History of Title IX

A TIMELINE



# Background



**2020 Final Rule**

- Nov. 2018 Publication → May 2020 Final → August 2020 Effective
- 124,000+ Comments

**DRAFT REGS**  
**2022**

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# Background

## 2020 Title IX Final Rule (effective now)

- Narrow geographic scope
- Narrow set of violations
- Narrow concentration (sexual harassment/violence)
- Narrow required reporting and formal process
- More significant process

30026 Federal Register / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations		
<b>DEPARTMENT OF EDUCATION</b> <b>34 CFR Part 106</b> [Docket ID ED-2018-OCR-0064] RIN 1870-AA14 <b>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance</b>	Room 4E308, Washington, DC 20202. Telephone: (202) 453-6639. Email: <i>Alejandro.Reyes@ed.gov</i> . If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1-800-877-8339.	Elementary and Secondary Schools Formal Complaint Support for Formal Complaint Definition No Formal Complaint Required To Report Sexual Harassment Burden on Complainants To File a Formal Complaint Anonymous Reporting and Anonymous Filing of Formal Complaints Officials Other Than the Title IX Coordinator Filing a Formal Complaint Complexity of a Document Labeled "Formal Complaint" Parents' and Guardians' Rights To File a Formal Complaint Methods of Reporting and Methods of Filing a Formal Complaint Miscellaneous Concerns About the Formal Complaint Definition Postsecondary Institution Respondent Sexual Harassment Overall Support and Opposition for the § 106.30 Sexual Harassment Definition Prong (1) <i>Quid pro quo</i> Prong (2) <i>Davis</i> standard <i>Davis</i> Standard Generally So Severe And Pervasive Objectively Offensive Effectively Denies Equal Access Prong (3) Sexual Assault, Dating Violence, Domestic Violence, Stalking Gender-Based Harassment Supportive Measures Overall Support and Opposition No-Contact Orders
<b>AGENCY:</b> Office for Civil Rights, Department of Education. <b>ACTION:</b> Final rule.	<b>SUPPLEMENTARY INFORMATION:</b> <b>Table of Contents</b> Effective Date Executive Summary Purpose of This Regulatory Action Summary of the Major Provisions of This Regulatory Action Timing, Comments, and Changes Adoption and Adaption of the Supreme Court's Framework To Address Sexual Harassment Differences Between Standards in Department Guidance and These Final Regulations Definition of Sexual Harassment Actual Knowledge Deliberate Indifference Role of Due Process in the Grievance Process Due Process Principles Summary of § 106.45 Similarities and Differences Between the § 106.45 Grievance Process and Department Guidance Public Comment Analysis of Comments and Changes Personal Stories	
<b>SUMMARY:</b> The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as "recipients" or "schools"), must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. These regulations are intended to effectuate Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in		



# Background



41390 Federal Register / Vol. 87, No. 132 / Tuesday, July 12, 2022 / Proposed Rules

## DEPARTMENT OF EDUCATION

### 34 CFR Part 106

[Docket ID ED-2021-OCR-0166]

RIN 1870-AA16

#### Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**AGENCY:** Office for Civil Rights, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Education (Department) proposes to amend the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The purpose of the proposed regulations is to better align the Title IX regulatory requirements with Title IX's nondiscrimination mandate, and to clarify the scope and application of Title IX and the obligation of all schools, including elementary schools, secondary schools, postsecondary institutions, and other

convert the PDF to "print-to-PDF" format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

• **Federal eRulemaking Portal:** Please go to <http://www.regulations.gov> to submit your comments electronically. Information on using <http://www.regulations.gov>, including instructions for finding a rule on the site and submitting comments, is available on the site under "FAQ."

**Note:** The Department's policy is to generally make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at <http://www.regulations.gov>. Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to

#### Executive Summary

##### Purpose of This Regulatory Action

The Department's review of the current regulations and of information received during and pursuant to a week-long public hearing as well as stakeholder listening sessions and meetings suggest that the current regulations do not best fulfill the requirement of Title IX of the Education Amendments of 1972 (Title IX) that schools and institutions that receive Federal financial assistance eliminate discrimination on the basis of sex in their education programs or activities. The Department therefore proposes that the current regulations should be amended to provide greater clarity regarding the scope of sex discrimination, including recipients' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Further, the Department proposes that the current regulations could better account for the variety of education

## 2022 Proposed Title IX Rule

- Significant changes
- Some significant things not changed
- If application abroad comes back, it will come back *wider*

# (Proposed) Expanded Scope

- Sex-Based Harassment (Proposed § 106.2) includes Discrimination on the Basis of Sex (Proposed § 106.10)

## SEX-BASED HARASSMENT

- Quid pro quo
- Hostile environment: "Severe *or* pervasive"
- Specific Offenses, including sexual assault, dating violence, domestic violence, and stalking

## DISCRIMINATION ON THE BASIS OF SEX

- Discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

# (Proposed) Expanded Responsibility



# LGBTQI+

- “sex stereotypes, sex characteristics,... sexual orientation, and gender identity.”
- separate rule making for athletic eligibility standards



# Responding and Notification

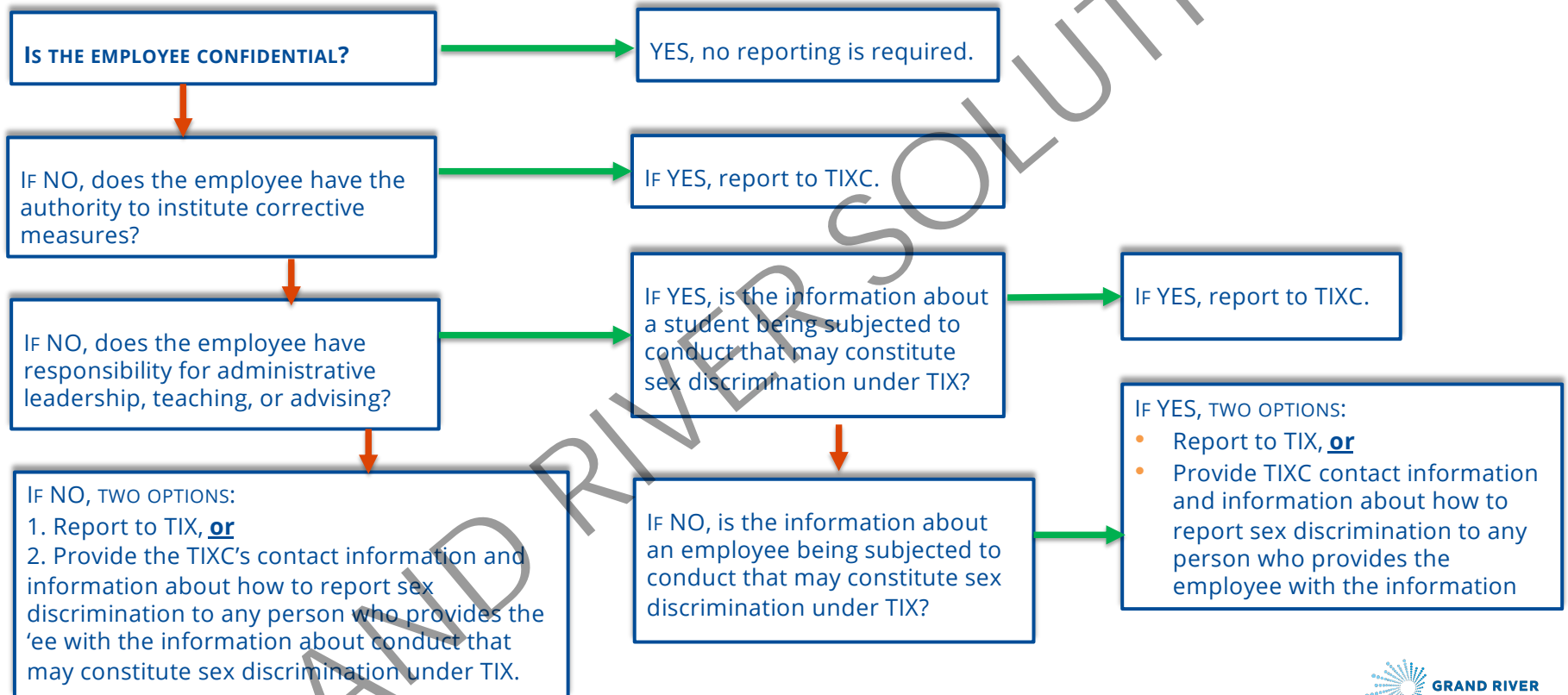
## "actual knowledge"

- "[R]equire a recipient to take a prompt and effective action to end any prohibited sex discrimination that has occurred in its education program or activity, to prevent its recurrence, and remedy its effects."  
(Proposed § 106.44(a))
- Supportive measures

## Employees required to notify the TIXC (proposed § 106.44) are those who are **not** confidential, and:

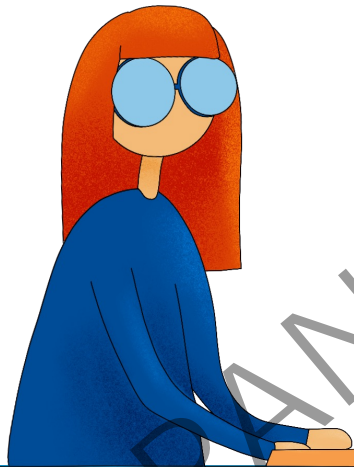
- have responsibility for administrative leadership, teaching, or advising
- have authority to institute corrective measures
- All other employees who are not confidential employees\*

# Does an employee have to take any action because of what they learned about conduct that may constitute sex discrimination under TIX to the TIXC?



# Geography and Jurisdiction

- Expanded scope (Proposed § 106.11)
- ~~“in the United States”~~ (Current § 106.44(a))



“It also requires a recipient to respond to a hostile environment based on sex within its education program or activity in the United States, **even if sex-based conduct contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.**” (Proposed § 106.11)

GEOGRAPHY

# Geography and Jurisdiction

- Expanded scope  
(Proposed § 106.11)
- “in the United States”  
(Current § 106.44(a))

## Long Term Concept

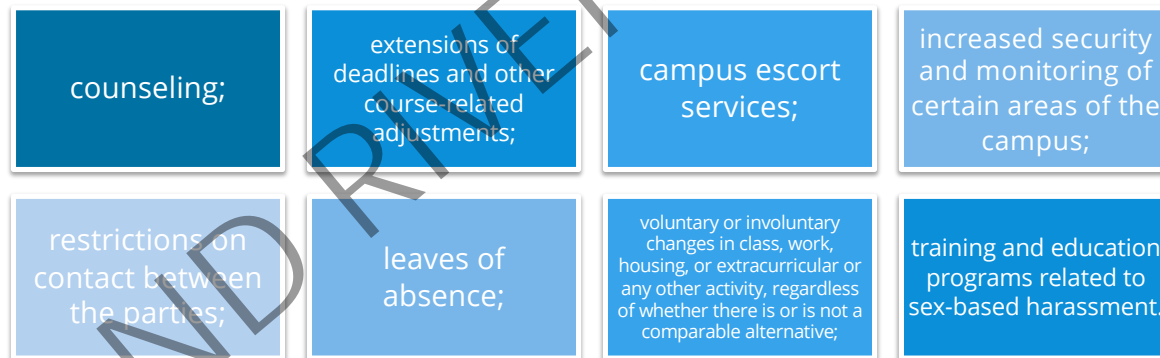
- Which matters more:
  - Where the incident happened?
  - Where (and whether) the person is excluded/limited from their education program or activity?

**GEOGRAPHY**



# Supportive Measures

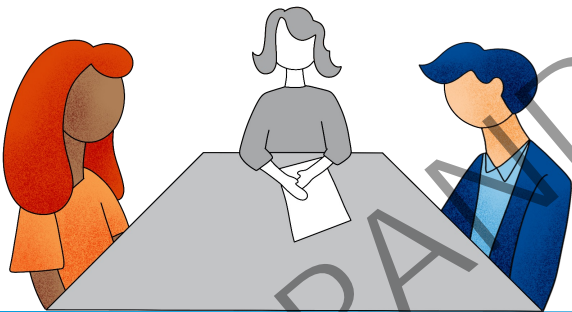
- Definition expanded from the 2020 Final Rule
- “Upon being notified of conduct that **may** constitute sex discrimination under Title IX, a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party’s access to the recipient’s education program or activity” (Proposed § 106.44(g))
- Supportive measures may include but are not limited to:



# Informal Resolution

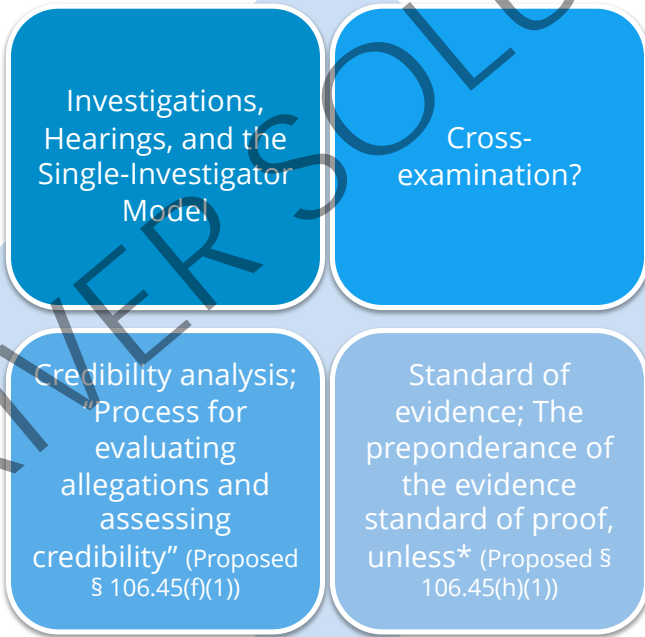
When may informal resolution begin?

Other changes?



# INFORMAL RESOLUTION

# Formal Resolution



# PROCEDURES

# Training

- SPECIFIC OBLIGATIONS TO TRAIN

Employees: Scope and obligations; responsible employee duties; pregnant/parenting

Investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures

Facilitators of informal resolutions

TIXC and designees

# Notice and COMMENT

The 60-day comment period began July 12 when the proposed rule was published in the Federal Register.



DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>. However, if you require an accommodation or cannot otherwise submit your comments via <http://www.regulations.gov>, please contact the program contact person listed under FOR FURTHER INFORMATION CONTACT. The Department will not

# Thank you!

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