

# Don't Fear the Reaper

*Knowing When to Initiate  
a Title IX Complaint*



**Thompson & Horton**

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# Presenters



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# TacTIXs Recap

01

**Preparation**

January and March: Preparing for the release of the final 2024 Rules

02

**Preparation 2.0**

April and May: Preparing to implement the 2024 Rules; policies and streamlined procedures

03

**Litigation**

June and July: Following the litigation and status of the 2024 Rules across the country

04

**Compliance**

August, September, October: Complying with Title IX, regardless of which regulations apply in your state

# AGENDA

The background is a vibrant orange and yellow gradient, suggesting a sunset or moonlit night. A large, bright yellow full moon is positioned in the upper right quadrant. In the lower left, there is a silhouette of a multi-towered haunted house with glowing windows. Below the house is a graveyard with several crosses and a tombstone. Bare trees are scattered throughout the scene, and several black bat silhouettes are flying in the sky. A jack-o'-lantern with a carved face hangs from a tree on the right side.

- ✓ Litigation update
- ✓ What do the rules say?
- ✓ Trick or Treat



# Update on Title IX Litigation





# Update on Title IX Litigation







2020

2024

# The Rules



# Rules

## 2020

- A formal complaint can be filed by a complainant or signed by the Title IX Coordinator.

## 2024

- The Title IX Coordinator, when notified of conduct that reasonably may constitute sex discrimination under Title IX must take the following actions to promptly and effectively end any sex discrimination in the education program or activity, prevent its recurrence, and remedy its effects ... in the absence of a complaint or withdrawal of any or all of the allegations in a complaint, determine whether to initiate a complaint.





# 2020 Rules

## STANDARD



The 2020 regulations obligate a recipient to respond in a manner that is not clearly unreasonable in light of the known circumstances.



A Title IX Coordinator has discretion to sign a formal complaint that initiates a grievance process; thus, if a non-deliberately indifferent response to actual knowledge of sexual harassment necessitates investigating allegations, the recipient (via the Title IX Coordinator) has the authority to take that action.



# 2020 Rules

## **SIGNING A COMPLAINT IS DISCRETIONARY**



The formal complaint definition thus ensures that complainants retain more autonomy and control over when the complainant's reported victimization leads to a formal grievance process, and recipients are not forced to expend resources investigating situations over the wishes of a complainant, unless the Title IX Coordinator has determined that such an investigation is necessary.

# 2020 Rules

## ALLEGED SERIAL OFFENDER



If a Title IX Coordinator were to receive multiple reports of sexual harassment against the same respondent, as part of a non-deliberately indifferent response the Title IX Coordinator may sign a formal complaint to initiate a grievance process against the respondent, even where no person who alleges to be the victim wishes to file a formal complaint.



# 2020 Rules

## IMPARTIALITY



A Title IX Coordinator's decision to sign a formal complaint is made on behalf of the recipient, not in support of the complainant or in opposition to the respondent or as an indication of whether the allegations are credible, have merit, or whether there is evidence sufficient to determine responsibility.

# 2020 Rules

## IMPARTIALITY



We do not believe that signing a formal complaint that initiates a grievance process inherently creates a conflict of interest between the Title IX Coordinator and the respondent; in such a situation, the Title IX Coordinator is not advocating for or against the complainant or respondent, and is not subscribing to the truth of the allegations, but is rather instituting a grievance process (on behalf of the recipient, not on behalf of the complainant) based on reported sexual harassment so that the recipient may factually determine, through a fair and impartial grievance process, whether or not sexual harassment occurred in the recipient's education program or activity.



# 2020 Rules

## FACTORS TO CONSIDER

The Title IX Coordinator *may* consider a variety of factors:

- 🕷️ Pattern of alleged misconduct by a particular respondent
- 🕷️ Campus safety
- 🕷️ Survivor autonomy
- 🕷️ Respect for the most efficient use of recipient's resources
- 🕷️ Threats, violence, or weapons



## FACTORS TO CONSIDER

To make the fact-specific determination of whether to initiate a complaint of sex discrimination, the Title IX Coordinator ***must*** consider, at a minimum, the following factors:



The complainant's request not to proceed with initiation of a complaint.



The complainant's reasonable safety concerns regarding initiation of a complaint.

# FACTORS TO CONSIDER

To make the fact-specific determination of whether to initiate a complaint of sex discrimination, the Title IX Coordinator **must** consider, at a minimum, the following factors:

- ✖ The risk that additional acts of sex discrimination would occur if a complaint is not initiated.
- ✖ The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.

## FACTORS TO CONSIDER

To make the fact-specific determination of whether to initiate a complaint of sex discrimination, the Title IX Coordinator **must** consider, at a minimum, the following factors:

- ❖ The age and relationship of the parties, including whether the respondent is an employee of the recipient.
- ❖ The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals.



## FACTORS TO CONSIDER

To make the fact-specific determination of whether to initiate a complaint of sex discrimination, the Title IX Coordinator **must** consider, at a minimum, the following factors:

- ❖ The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred.
- ❖ Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

# DETERMINATION

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged

- ✦ presents an imminent and serious threat to the health or safety of the complainant or other person, or
- ✦ that the conduct as alleged prevents the recipient from ensuring equal access on the basis of sex to its education program or activity,

the Title IX Coordinator may initiate a complaint.



## SAFETY



If the Title IX Coordinator initiates a complaint, the Coordinator must notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.

# SUPPORT

- 🎃 Remember: Even if no complaint is filed, offer supportive measures to the complainant.





# INFORMAL RESOLUTION

- 🎃 Remember: under the 2024 Rules, the Title IX Coordinator can offer informal resolution even if no complaint is filed.



# DISCIPLINE

- 🎃 Remember: If the alleged misconduct would be Title IX sex discrimination and the Title IX Coordinator does not initiate a complaint, the alleged misconduct **CANNOT** be addressed through another district policy or procedure (no discipline).





# Trick or Treat





# Tips & Takeaways

Treats





# Tips and Takeaways

- 🎃 Complainant autonomy is the first consideration
- 🎃 Remember, harassment often takes away a victims sense of control



# Tips and Takeaways

- 🎃 Consider the victim's safety and the chances the harassment/discrimination will continue
- 🎃 Also consider the broader school community





# Tips and Takeaways

- 🎃 Document the reasons for the decision to sign/initiate a complaint or not
- 🎃 Refer to the factors under your rules in your notes



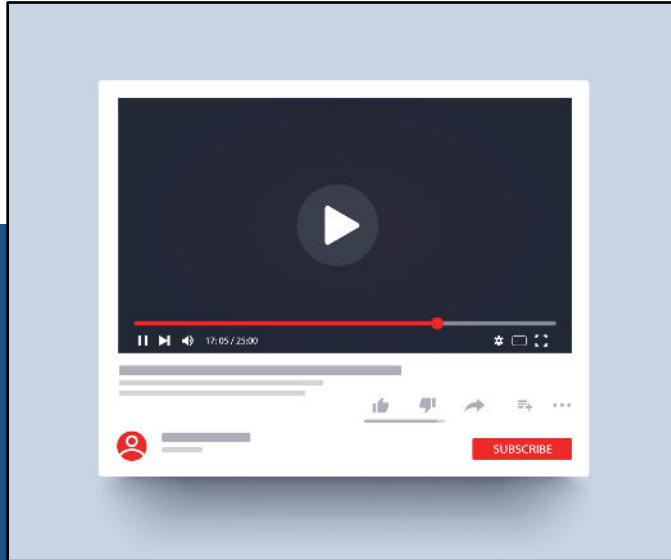


**Title IX Administrators**

**T&H Has You Covered**



## Video Training



## Virtual Training



## In-Person Training



**Thompson & Horton's**

# 2024 Title IX Training

[titleix@thlaw.com](mailto:titleix@thlaw.com)

# Title IX Leadership Alliances

## K-12

**4<sup>th</sup> Tuesday** of the month

- ▶ Register at [thlaw.com/k12alliance](http://thlaw.com/k12alliance)
- ▶ Email [titleix@thlaw.com](mailto:titleix@thlaw.com)
- ▶ Use the QR code



## Community College

**Last Wednesday** of the month

- ▶ Register at [thlaw.com/ccalliance](http://thlaw.com/ccalliance)
- ▶ Email [titleix@thlaw.com](mailto:titleix@thlaw.com)
- ▶ Use the QR code



## 4 Yr. College or University

**Last Thursday** of the month

- ▶ Register at [thlaw.com/4yralliance](http://thlaw.com/4yralliance)
- ▶ Email [titleix@thlaw.com](mailto:titleix@thlaw.com)
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# Thank You



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