



# A Title IX Feast:

*Serving Up Answers and Predictions*

# Thompson & Horton

HOUSTON • DALLAS • AUSTIN • FORT WORTH



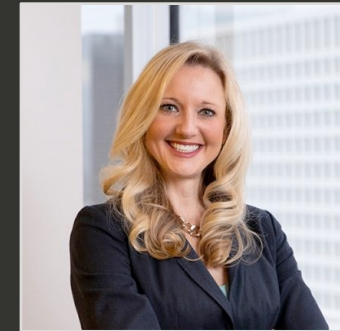
# Presenters



**Kendra Yoch**  
Counsel  
[kyoch@thompsonhorton.com](mailto:kyoch@thompsonhorton.com)



**Holly McIntush**  
Partner  
[hmcintush@thompsonhorton.com](mailto:hmcintush@thompsonhorton.com)



**Rebecca Bailey**  
Partner  
[rbailey@thompsonhorton.com](mailto:rbailey@thompsonhorton.com)



# 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



# Update on Title IX Litigation



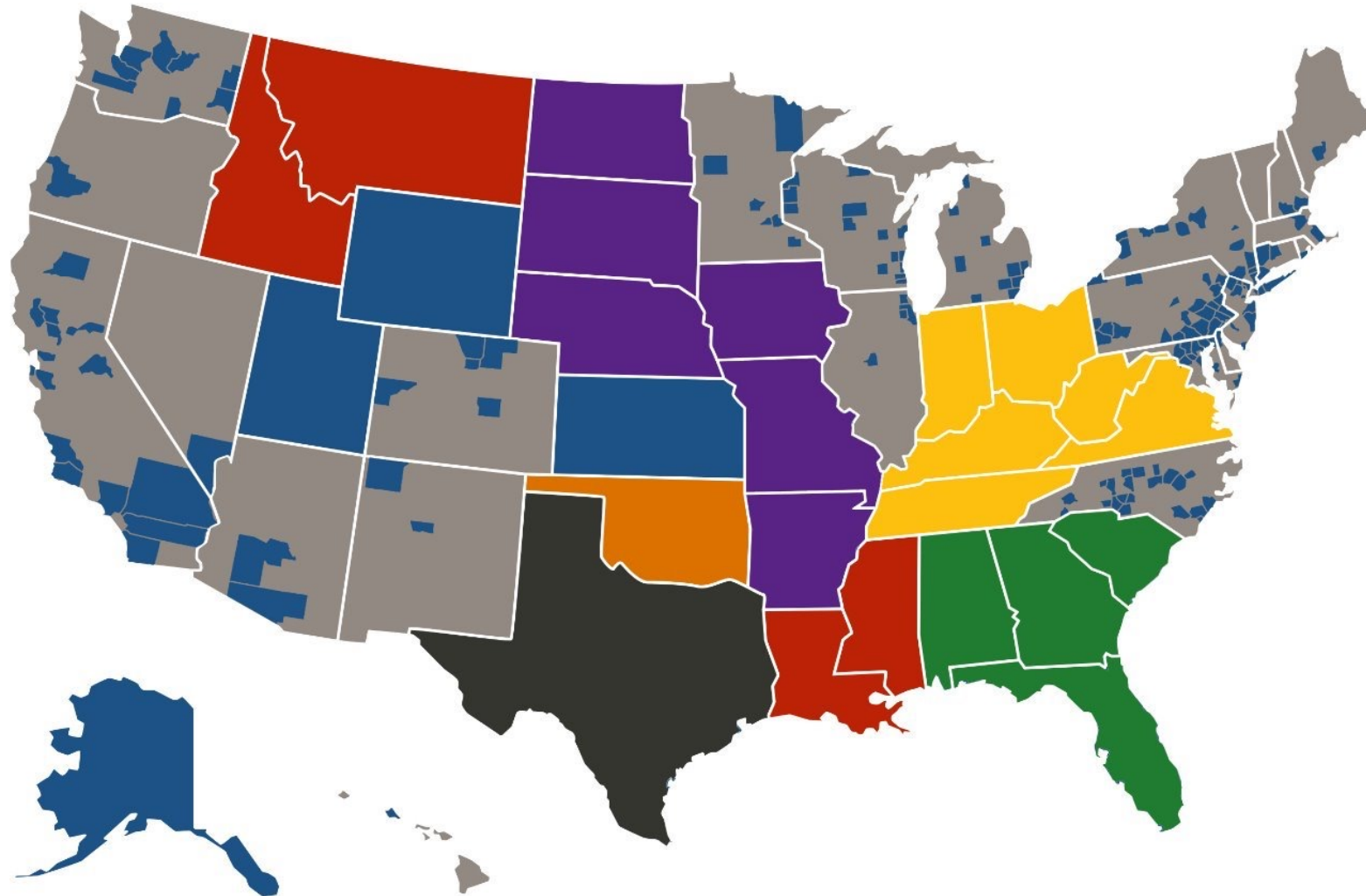


# Update on Title IX Litigation






# 2020 Rules in Effect



**DISCLAIMER:** Today's webinar is not legal advice. The questions you have submitted cover common scenarios you might encounter as a Title IX administrator, but we do not have all the facts or context needed to provide legal advice for what any institution should do in a specific case. If you need help with particular situations or with decision points impacting your educational institution, please reach out to us directly and we will be happy to assist.







**What if the  
complainant  
stops responding?**



# Dismissals

## 2020 Rules

- Alleged conduct, even if true, would not constitute Title IX sexual harassment (mandatory dismissal)
- Complainant withdraws the complaint or allegations in writing
- Respondent is no longer enrolled or employed by the institution
- Specific circumstances prevent the institution from gathering sufficient evidence

## 2024 Rules

- Alleged conduct, even if proven, would not constitute Title IX sex discrimination
- Complainant voluntarily withdraws any or all of the allegations
- Respondent is not participating in education program or activity and is not employed by institution
- Unable to identify respondent after reasonable steps







**How do we handle situations where the respondent moves away?**



# Dismissals

## 2020 Rules


- Alleged conduct, even if true, would not constitute Title IX sexual harassment (mandatory dismissal)
- Complainant withdraws the complaint or allegations in writing
- Respondent is no longer enrolled or employed by the institution
- Specific circumstances prevent the institution from gathering sufficient evidence

## 2024 Rules

- Alleged conduct, even if proven, would not constitute Title IX sex discrimination
- Complainant voluntarily withdraws any or all of the allegations
- Respondent is not participating in education program or activity and is not employed by institution
- Unable to identify respondent after reasonable steps







**Who decides whether to  
dismiss – Title IX  
Coordinator or  
decisionmaker?**



# Dismissals

Under both the 2020 and the 2024 rules:

- **The recipient** may (or must under 2020 rules) dismiss the complaint
- **The coordinator** is responsible for **the recipient's** compliance with the rules
- **The decisionmaker(s)** is responsible for applying the applicable standard of proof and issuing a written determination







**What if the decision-maker doesn't think the investigator gathered all the necessary information?**



# Evidence Gathering

Remember



The burden of proof is on the institution to gather sufficient evidence





**Can we discipline for  
nonsexual misconduct  
that occurred alongside  
Title IX harassment?**





# Retaliation

## 2020 Rules


- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation

## 2024 Rules

- Not directly addressed in the rules
- Preamble notes:
  - “It is valuable to remind recipients that they violate the prohibition on retaliation if they initiate a disciplinary process against a student for the purpose of interfering with Title IX rights or because the student participated in Title IX grievance procedures.”
  - Discipline not arising out of the same facts and circumstances can also be retaliatory





A row of seven autumn leaves is laid out horizontally on a dark, textured wooden surface. The leaves show a color gradient from left to right: the first is bright green, the second is light green with yellow edges, the third is yellow, the fourth is yellow-orange, the fifth is orange, the sixth is orange-red, and the seventh is bright red. Each leaf has a distinct vein pattern and some small dark spots or holes, suggesting they are from a deciduous tree. The wooden background is dark and has a prominent grain pattern.

**Is there a statute of limitations on the time to file a Title IX report/complaint?**



# Dismissals

## 2020 Rules

- Alleged conduct, even if true, would not constitute Title IX sexual harassment (mandatory dismissal)
- Complainant withdraws the complaint or allegations in writing
- Respondent is no longer enrolled or employed by the institution
- **Specific circumstances prevent the institution from gathering sufficient evidence**

## 2024 Rules

- Alleged conduct, even if proven, would not constitute Title IX sex discrimination
- Complainant voluntarily withdraws any or all of the allegations
- Respondent is not participating in education program or activity and is not employed by institution
- Unable to identify respondent after reasonable steps







**Can you institute a no contact order if one party refuses to sign?**



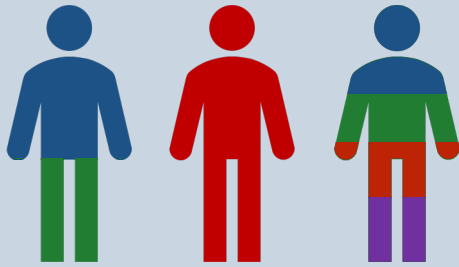


**Should the Title IX Coordinator also be the investigator? What is best practice?**



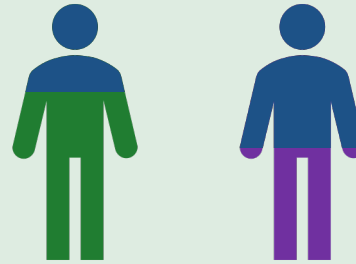
# Title IX Team

## 2020 Rules



- Decisionmaker cannot be the Coordinator or Investigator
- Informal resolution facilitator must be trained and impartial

## 2024 Rules




- Coordinator + Investigator + Decisionmaker
- Informal resolution facilitator cannot be same as investigator or decisionmaker

## Both



- Separate Appellate Decisionmaker required



A close-up photograph of several pumpkins. In the center is a large, ribbed pumpkin with a yellowish-orange hue. To its right is a large, smooth-skinned orange pumpkin. In the upper left, there are several smaller pumpkins, including one with a vibrant blue-green color and white speckles. The background is dark and out of focus, suggesting a display of pumpkins in a market or farm setting.

**How should we handle allegations against very young students? How do you determine if touching is for purposes of sexual gratification?**



# Allegations

Under both the 2020 and the 2024 rules:

- The recipient must investigate the **allegations** in a formal complaint.
- Dismissals are based whether the conduct alleged in the formal complain, ***if proved***, would be Title IX sexual harassment/discrimination







**After a report of inappropriate touching, a safety plan and supportive measures are instituted, and parents are satisfied. Do you have to offer the Title IX information and formal complaint process?**



# Institutional Response

## 2020 Rules


- The Title IX Coordinator must promptly contact the complainant to discuss:
  - Availability of supportive measures
  - Availability of supportive measures with or without filing a complaint
  - The complainant's wishes with respect to supportive measures
  - **The process for filing a formal complaint**

## 2024 Rules

- A recipient must require its Title IX Coordinator, when notified of conduct that reasonably may constitute sex discrimination under Title IX or this part, to take the following actions...:
  - Offer and coordinate supportive measures
  - Notify the complainant or, if the complainant is unknown, the individual who reported the conduct, of the grievance procedures







**You have a report, and the complainant is considering whether to file a complaint. What obligation is there to notify the respondent?**



# Confidentiality

## 2020 Rules

- **The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination,** including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted [FERPA, as required by law, or to] conduct of any investigation, hearing, or judicial proceeding arising thereunder.

## 2024 Rules

- **Upon the initiation of the postsecondary institution's** sex-based harassment grievance procedures under this section, a postsecondary institution must provide written notice to the parties

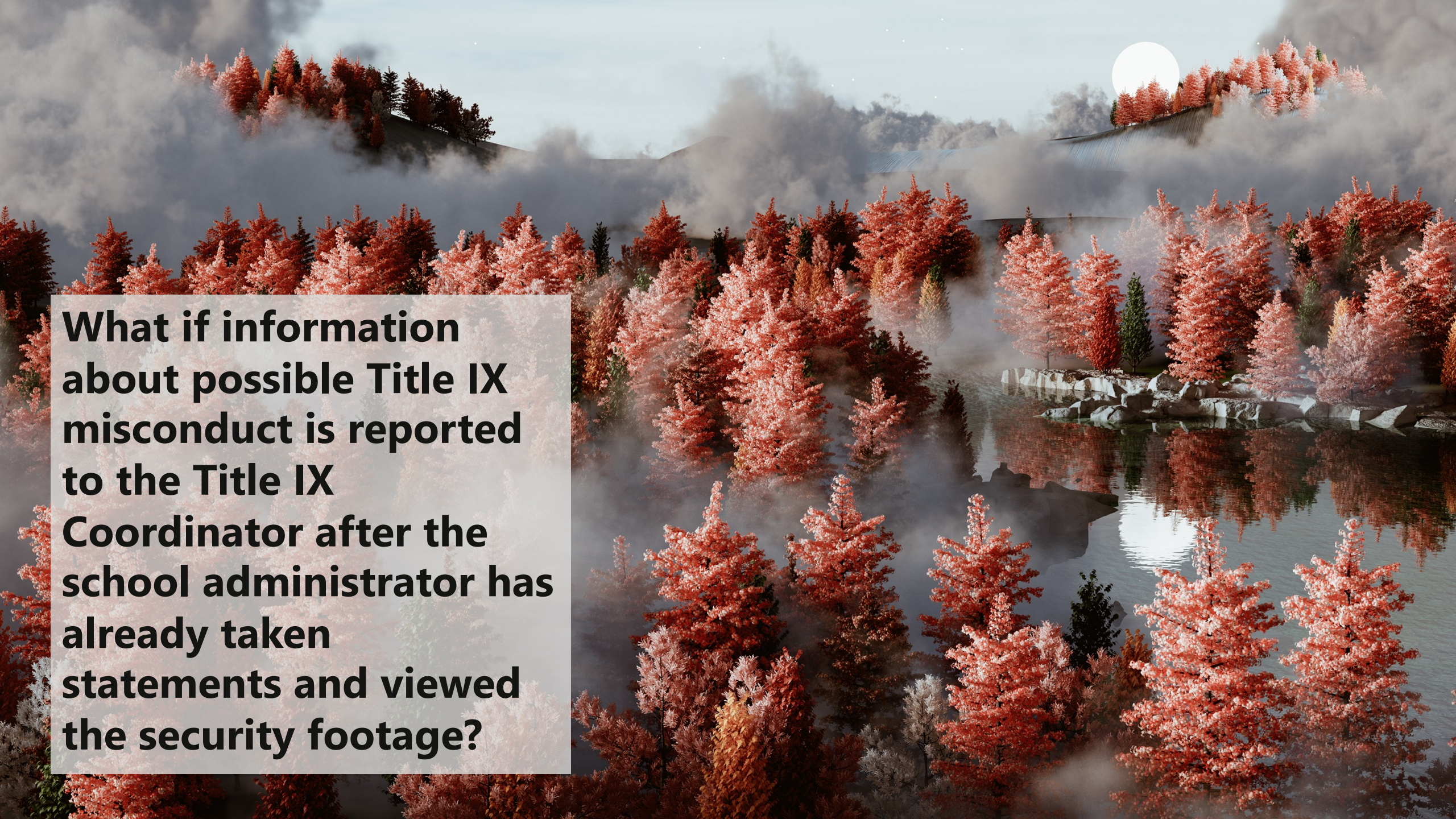







**Can the parties waive the timelines in the Title IX grievance process?**



A scenic autumn landscape featuring a calm lake in the foreground, surrounded by numerous trees with vibrant orange, red, and yellow foliage. In the background, a large, dark, curved structure, possibly a bridge or a large building, is partially obscured by mist or fog. A full moon is visible in the sky, reflecting on the water. The overall atmosphere is serene and picturesque.

**What if information about possible Title IX misconduct is reported to the Title IX Coordinator after the school administrator has already taken statements and viewed the security footage?**



A warm, inviting photograph of a Thanksgiving dinner table. The centerpiece is a large, golden-brown roasted turkey with a small garnish on top. To the left, a small pumpkin sits next to a glass of water. In the foreground, several pumpkins and a lit candle in a small jar are visible. To the right, a bowl of corn on the cob and another glass of water are present. The background is softly blurred, showing a Christmas tree with lights and a candelabra, creating a cozy holiday atmosphere.

**How do you handle a complaint by or against a community member (PTA, volunteer, etc.)?**



# Parties

## 2020 Rules

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient
- Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment; permissive dismissal if no longer attending or employed by the institution
- "Education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs

## 2024 Rules

- Complainant is a student or employee or another person alleged to have been subjected to sex discrimination under Title IX who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination
- Respondent means a person who is alleged to have violated the recipient's prohibition on sex discrimination; permissive dismissal if not participating in EPA or employed by institution
- Conduct that occurs under a recipient's education program or activity includes ... conduct that is subject to the recipient's disciplinary authority







**When a campus reports a Title IX issue, do you inform the campus of the outcome?**



**A student reports an off-campus assault. How do you evaluate whether the impact to their education warrants a Title IX investigation?**






A large, cylindrical haystack made of dry straw is the central focus in the foreground. The field is filled with harvested crops, and several other smaller haystacks are scattered in the distance. The sky is filled with dramatic, colorful clouds in shades of orange, yellow, and blue, suggesting a sunset or sunrise. The overall scene is rural and peaceful.

**What are the recommendations for sharing a respondent's relevant behavioral history in the investigative report while ensuring confidentiality?**



The image features three distinct pies. In the top left, a portion of a pie with a crumbly, golden-brown topping and a caramel drizzle is visible in a foil pan. The top right pie is a whole cherry pie on a white plate, with a golden-brown crust and several dark cherry slices peeking through. The bottom left pie is a large pecan pie in a foil pan, characterized by its thick, dark brown filling and a dense layer of pecan nuts on top. The bottom right pie is an apple pie in a foil pan, with a lattice crust and visible apple slices and a dark filling. The pies are arranged on a light-colored wooden surface.

**How do you distinguish between dating violence and acts of violence between two students who are dating? Is informal resolution appropriate?**




# Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship







**What will happen to  
the 2024 Rules?**



# New Administration

**Propose new rules  
(potentially the 2020  
Rules) + notice and  
comment**

**Rescind the 2024  
Rules\***

**Stop defending the  
2024 Rules and wait  
for the Court to  
invalidate them**

**Congressional action  
to define sex or sex  
discrimination or to  
revoke the 2024 Rules**

**Cease enforcement of  
2024 Rules**





# Take-Aways

- 🍂 Charge is to end the discrimination or harassment, remedy its effects, and prevent its recurrence
- 🍂 Keep an eye on litigation and the new administration
- 🍂 Keep training your Title IX team
- 🍂 Train all employees about reporting obligations





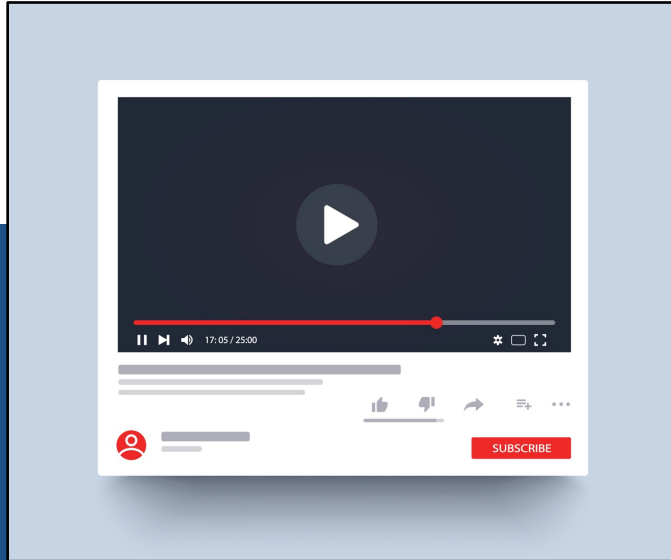


**Title IX Administrators**

**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)
- ▶ Use the QR code





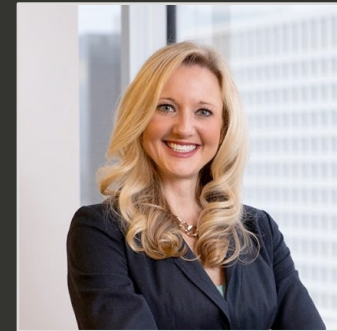
# Thank you!



**Kendra Yoch**  
Counsel  
[kyoch@thompsonhorton.com](mailto:kyoch@thompsonhorton.com)



**Holly McIntush**  
Partner  
[hmcintush@thompsonhorton.com](mailto:hmcintush@thompsonhorton.com)



**Rebecca Bailey**  
Partner  
[rbailey@thompsonhorton.com](mailto:rbailey@thompsonhorton.com)





# Copyright Notice

The materials contained in this document are proprietary and are copyrighted. The legal penalties for copyright infringement range from \$750 to \$150,000 for each work infringed, and the infringer pays for all attorneys' fees and court costs.

Your right is a right of inspection and review of the materials contained herein, only. No other right is granted beyond viewing. You are not authorized to copy, use, adapt, repost, share publicly, or alter any contents from this document. You are not permitted to use the materials in this document for training, or for any commercial purpose. Any such use will result in damages equivalent to the full-per-head registration costs for the equivalent Thompson & Horton training, plus damages for reputational harm to Thompson & Horton, in addition to any copyright infringement fines and/or penalties.

Proceeding to use and access the content on this document demonstrates your acceptance and understanding of these terms and conditions. To contact Thompson & Horton with questions about any of the contents of this document, please email [titleix@thompsonhorton.com](mailto:titleix@thompsonhorton.com).