Title IX Enforcement Changes: Initial Read

WITH BRICKER & ECKLER LLP

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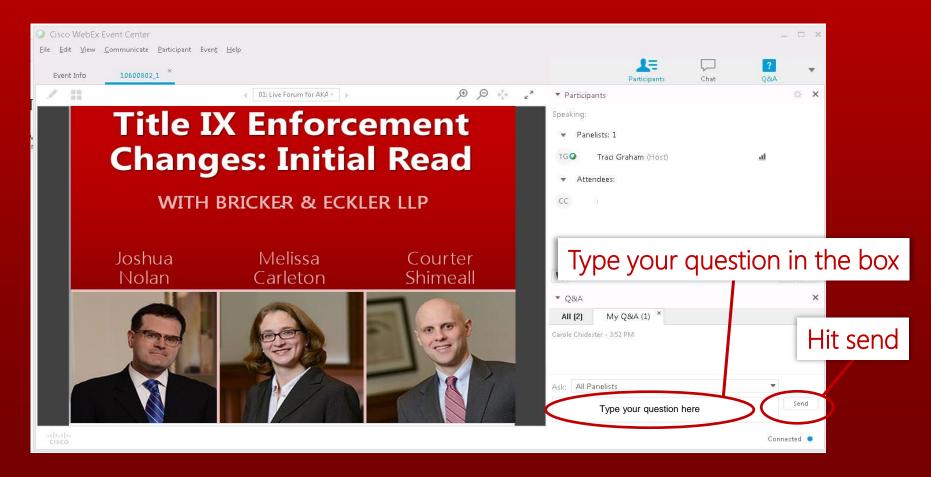






Live Forum

To ask a question using the chat function:



Agenda

- What Betsy DeVos said
- Examples vs. DCL requirements
- What still stands?
- What's next?
- Takeaways

Yesterday's Speech

- Continued enforcement of Title IX
- "The era of 'rule by letter' is over."
- Take survivors seriously
- Don't predetermine guilt

Breaking down examples

- No support for complainants
- Request not to investigate/adjudicate
- One comment = sexual harassment

Breaking down examples

- No information to respondent; campus-wide email
- No training for adjudicators; no appeal
- Failure to accommodate all parties

- VAWA:
 - Definitions
 - Bystander intervention
 - Risk reduction
 - List of sanctions

- VAWA:
 - How to make a report
 - Preserving evidence
 - Victim's rights (CPOs, NCOs, etc.)

- VAWA:
 - Prompt, fair, impartial investigation/resolution
 - Annual training for administrators involved in complaints
 - Advisor of choice

- VAWA:
 - Simultaneous notice of results, appeal rights, final notice
 - Confidentiality
 - Info about available resources

- VAWA:
 - "Written notification of victims" about interim measures (but be equitable)
 - Written explanation of rights/options

- Revised Sexual Harassment 2001 Guidance:
 - 1997 original version
 - Gebser and Davis Supreme Court
 Decisions issued (monetary damages,
 deliberate indifference, actual knowledge;
 peer on peer harassment)
 - 2000 revised guidance for notice and comment

- Revised Sexual Harassment 2001 Guidance:
 - Definition of sexual harassment/hostile environment
 - Interim measures (global)
 - Eliminate, prevent, address
 - Grievance Process/Protections

- Revised Sexual Harassment 2001 Guidance: Grievance Process
 - "prompt and equitable"
 - "early notification and intervention"
 - "accessible, effective, and fairly applied"

- Revised Sexual Harassment 2001 Guidance: Due Process
 - "Adequate, reliable, and impartial investigation, including opportunity to present witnesses and other evidence"
 - "notice to parties of the outcome of complaint"

- Revised Sexual Harassment 2001 Guidance: Due Process
 - "[FERPA] does not override ... federally protected due process rights of persons accused of sexual harassment."
 - Ensure Title IX protections while "according due process rights for both parties involved."

- 2011 Dear Colleague Letter:
 - Not rescinded (yet)
 - Will issue temporary guidance
 - Going through notice and comment

What's Next?



Takeaways

- Be patient
- Consider whether this is the time to revise your policy...
- Anticipate need for statement to students
- Anticipate need for support for current parties

Takeaways

- Open OCR complaint? consult with counsel
- Don't let up on the training!
- Follow your policy

Save the Date

Sept 15, 12:00 – Webinar: Sending Students Home: Interim Suspensions and Safety Concerns

Sept 21-22 – UK Conference – VAW/TIX

Oct 6, 12:00 – Webinar: Public Records and Private Police

Nov 11, 12:00 – Webinar: Hot Topics in Labor & Employment for Higher Ed



You can register for all of our upcoming webinars/events by visiting:

http://www.bricker.com/events/

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TITLE IX RESOURCES www.bricker.com/titleix

