

**MAY 11, 2020 WEBINAR**

# **The New Title IX: What You Should Know Now**

**Presented by Amy Dickerson, Emily Tulloch, and Jackie Wernz**

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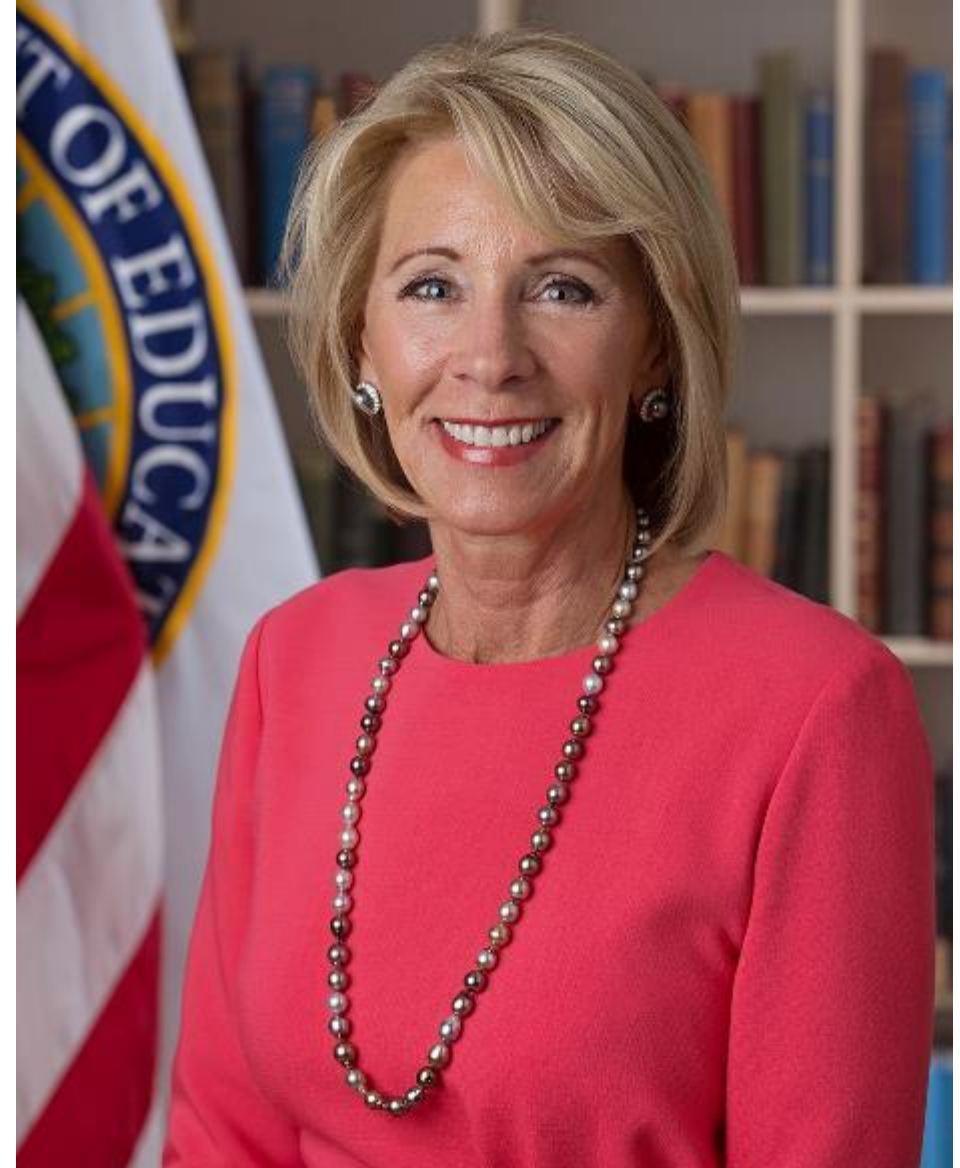
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# FRANCZEK

Franczek P.C. has been synonymous with high-quality legal services for educational institutions and employers for more than 25 years. We focus our practice on three areas—education, labor, and employment law. Our clearly defined practice allows us to provide educational clients laser-focused, premier advice. This allows our clients to advance their goals in the most efficient and cost-effective way.







- High level insights
- Specific changes to note
- Your summer checklist

## Roadmap



# The View From 30,000 Feet

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- Adapted "Gebser/Davis" standard
- Details: Definitions, procedures, paperwork, trainings
- Focus: Fairness
- Lawsuits likely
- Effective Date: August 14, 2020

# ED Lingo

## BEFORE

- Complainant
- Respondent
- ??? Reporter ???

## AFTER

- Victim or Survivor
- Perpetrator

# “Sexual Harassment”

1. Quid Pro Quo – Employee  
RP
2. Hostile Environment
3. Clery Act Terms





## Hostile Environment

- Unwelcomed conduct
- Based on sex
- In a school's program or activity in the U.S.
- Determined by a **reasonable person** to be so severe, pervasive, **and** objectively offensive that it **effectively denies a person equal access to the school's education program and activity.**

Program  
or  
Activity  
in the  
U.S.

Substantial Control

Context of SH

Person accused

# Online & Off Campus

Substantial control over the context?



# Actual Knowledge

## **Knowledge of:**

- Sexual Harassment
- Allegations of Sexual Harassment

## **Knowledge by:**

- Title IX Coordinator
- School official with authority to institute corrective measures
- In K-12, all employees

# Response

- Must not be clearly unreasonable in light of the known circumstances
- If no formal complaint:
  1. TIX Coordinator contact
  2. Supportive option discussion
  3. Formal complaint process notice

# Response

- Formal complaint must be filed by CP or signed by TIX Coordinator
- If formal complaint, 10 specific items must be in “grievance process” policy and followed in practice

# Supportive Measures

- Apply to CP and RP
- Cannot be punitive or disciplinary
- Students: "emergency removals"
- Employees: leave, subject to laws, policies, agreements

# Due Process/Fundamental Fairness

- **Sharing of evidence before the report is issued**
- **Final decision by different decisionmaker**
- **Live hearing + live cross (higher ed); Live hearing + written cross [or] just written cross in K-12**
- **Appeal by different decisionmaker**





## **Live Hearings**

- Required in higher education + advocate cross
- Hearing optional in K-12
- K-12: written cross after report



# Retaliation



- Expressly prohibited
- Could include code of conduct process



## To do List

1. So
2. Many
3. Things!

- Update key stakeholders
- Identify team
- Decide floor or ceiling approach, considering state law

# **Your Title IX To Do**



To do List

1. So
2. Many
3. Things!

- Create form documents and templates
- Prepare and provide required notifications and postings

**Your Title IX To Do**



## To do List

1. So
2. Many
3. Things!

- Update policies and procedures
- Plan trainings
- Post trainings on website

**Your Title IX To Do**



## Written Notices: Required

- Dismissal notice (CP only)
- Notice at start of investigation
- Interview notices
- Report
- Notice why proposed questions not asked on cross and why
- Written determination and notice of appeal rights
- Informal resolution notice



## **Written Notices: Recommended**

- Document information to complainant at initial meeting, including supportive measures requested/provided
- Document that review of evidence provided to both parties
- Document opportunity to ask questions, answers, follow-up questions, etc.

A close-up photograph of a stack of papers on a desk. A red highlighter and a black binder clip are visible on the stack. The word "Recordkeeping" is overlaid in white text in the center of the image. The background is blurred, showing a laptop and other desk items.

# Recordkeeping



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