

# Title IX Enforcement Changes: Initial Read

WITH BRICKER & ECKLER LLP

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# Live Forum

To ask a question using the chat function:

The screenshot displays the Cisco WebEx Event Center interface. The main content area features a red banner with the text "Title IX Enforcement Changes: Initial Read" and "WITH BRICKER & ECKLER LLP". Below the banner are three portrait photos of panelists: Joshua Nolan, Melissa Carleton, and Courter Shimeall. The interface includes a top navigation bar with "Event Info" and "10600802\_1". On the right side, there is a "Participants" panel showing "Speaking:" with "Traci Graham (Host)" and "Attendees:" with "CC". Below this is a "Q&A" panel with a dropdown menu set to "All [2]" and "My Q&A (1)". A message from "Carole Chidester - 3:52 PM" is visible. At the bottom of the Q&A panel, there is a text input field labeled "Ask:" with a dropdown menu set to "All Panelists". The input field contains the text "Type your question here" and a "Send" button. Red annotations highlight the input field and the "Send" button, with callouts that say "Type your question in the box" and "Hit send".

# 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

# What Still Stands?

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

# What Still Stands?

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



# What Still Stands?

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

# What Still Stands?

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

# What Still Stands?

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

# What Still Stands?

- 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

# What Still Stands?

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

# What Still Stands?

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

# What Still Stands?

- 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”

# What Still Stands?

- 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.”



# What Still Stands?

- 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  
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