

Slide 1

**The New Title IX Final Regulations:  
What You Need To Know To Stay In Compliance  
Day 2**



Bev Baligad, J.D.  
Presenter  
[bevbaligad@gmail.com](mailto:bevbaligad@gmail.com)

---

---

---

---

---

---


---

---

---

---

Slide 2

**Poll: What do you remember?** 

**Choose the best response.** According to information provided during yesterday's webinar, the "5 P's of Title IX Compliance" refers to

- a.) Policy, Police efforts, Prison, Personnel and Programs
- b.) Police, Preliminary hearings, Preliminary investigations, People and Programs.
- c.) Policy, Process, People, Professional Development and Programming.
- d.) Political representatives, Policies, Profit, Police and People.
- e.) I don't remember.

Copyright: 2020 Beverly Baligad. All rights reserved. 2

---

---

---

---

---

---

---

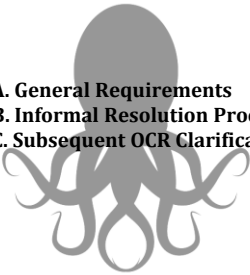
---

---

---

Slide 3

**Day 2**



- A. General Requirements**
- B. Informal Resolution Process**
- C. Subsequent OCR Clarifications**

Copyright: 2020. Beverly Baligad. All Rights Reserved. 3

---

---

---

---

---

---

---

---


---

---

Slide 4

**Required Training under the new Regs:**

- Days 2-4 will include most required trainings for Title IX Coordinators, investigators, decision makers and individuals involved with the informal process
- All designated campus representatives listed above must attend Days 2-4 **before** they may publish the powerpoints on their webpages
- Training regarding the institutions preferred use of technology for the purpose of hearings and a schools' educational program or activity must be provided by the campus separately (since they differ)
  - Any training provided cannot rely on sex stereotypes



BEVERLY V BALLIGAD Copyright 2020, Beverly Balligad. All Rights Reserved.

---

---

---

---

---

---

---

---


---

---

Slide 5

**Title IX Coordinators, investigators, adjudicators, and individuals facilitating informal resolution**

<ul style="list-style-type: none"> <li>• Definition of sexual harassment *</li> <li>• Scope of the schools' education program or activity</li> <li>• Conducting an investigation</li> <li>• Grievance process*</li> </ul>	<ul style="list-style-type: none"> <li>• Hearings, Appeals and informal resolutions</li> <li>• Impartiality, conflicts of interest and bias</li> <li>• Relevance and sufficiency (credibility)</li> <li>• Creating an investigative report that fairly summarizes relevant evidence</li> </ul>
---	--



BEVERLY V BALLIGAD Copyright 2020, Beverly Balligad. All Rights Reserved.

---

---

---

---

---

---

---

---


---

---

Slide 6

**General requirements: Definitions** [34 CFR 106.30(a)]

- A. Actual knowledge
- B. Complainant/Respondent
- C. Consent
- D. Formal complaint
- E. Supportive measures



BEVERLY V BALLIGAD Copyright 2020, Beverly Balligad. All Rights Reserved.

---

---

---

---

---

---

---

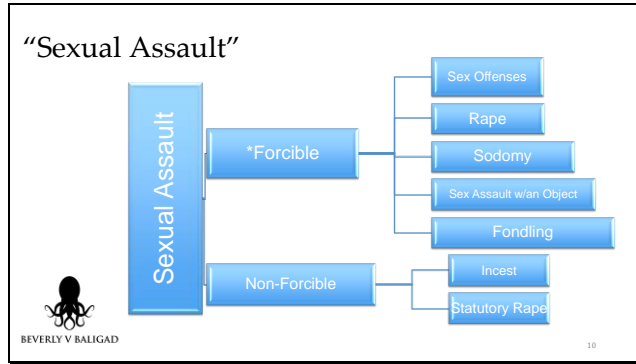
---

---

---



Slide  
10



---

---

---

---

---

---

---

---

---

---

Slide  
11

- Sexual Harassment: 3<sup>rd</sup> Type (sexual violence)**
1. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)
    - forcible sex offense (rape, fondling, sodomy)
    - nonforcible sex offense (statutory rape, incest)
  2. “dating violence” as defined in 34 U.S.C.12291(a)(10) (VAWA)
  3. “domestic violence” as defined in 34 U.S.C. 12291(a)(8) (VAWA)
  4. “stalking” as defined in 34 U.S.C.12291(a)(30) (VAWA)
- BEVERLY V BALIGAD Copyright 2020, Beverly Baligad. All Rights Reserved. 11

---

---

---

---

---

---

---

---

---

---

Slide  
12

- Sexual Assault** [20 U.S.C. 1092(f)(6)(A)(v)]
- “Sexual assault” as defined in uniform crime reporting (UCR) program; National Incident-Based Reporting System (NIBRS)
  - The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
  - Sex Offense: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- BEVERLY V BALIGAD Copyright 2020, Beverly Baligad. All Rights Reserved. 12

---

---

---

---

---

---

---

---


---

---

Slide  
13

### Sexual Assault- cont'd [20 U.S.C. 1092(f)(6)(A)(v)]

- Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Forcible sex offenses: rape, sodomy, sexual assault with an object, fondling
- Non-forcible: statutory rape, incest



BEVERLY V BALLIGAD

Copyright 2020, Beverly Balligad. All Rights Reserved.

13

---

---

---

---

---

---

---

---


---

---

Slide  
14

### Domestic Violence [34 U.S.C. 12291(a)(8)]

- Definition comes from VAWA
- includes felony or misdemeanor crimes of violence committed by
  - a current or former spouse, or
  - intimate partner of the victim, or
  - by a person with whom the victim shares a child in common, or
  - by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or
  - by a person similarly situated to a spouse of the victim under the domestic, or
  - family violence laws of the jurisdiction receiving grant monies, or
  - by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.



BEVERLY V BALLIGAD

Copyright 2020, Beverly Balligad. All Rights Reserved.

14

---

---

---

---

---

---

---

---


---

---

Slide  
15

### Dating Violence [34 U.S.C. 12291(a)(10)]

- Definition comes from VAWA
- Violence committed by
  - A. who person is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship.
    - ii. The type of relationship.
    - iii. The frequency of interaction between the persons involved in the relationship.



BEVERLY V BALLIGAD

Copyright 2020, Beverly Balligad. All Rights Reserved.

15

---

---

---

---

---

---

---

---


---

---

Slide  
16

**Stalking** [20 U.S.C. 12291(a)(30)]

- Definition comes from VAWA
- Engaging in a course of conduct
- Directed at a specific person
- That would cause a reasonable person to:
  - fear for his or her safety or the safety of others, OR
  - suffer substantial emotional distress



BEVERLY V BALIGAD

Copyright: 2020, Beverly Baligad. All Rights Reserved.

16

---

---

---

---

---

---

---


---

---

---

Slide  
17

**Scenario 2**



Pat has been in a relationship with Jan for 2 months. They had sex once, and saw each other about once a week, since they both had rigorous school schedules, and barely saw each other. Jan is also seeing Orin, and has been for about 3 weeks unbeknownst to Pat. Jan has also had sex with Orin once. Jan likes them both. One day, Pat found out about Orin. He threw his open backpack to the ground and a sharp piece from his computer slices Jan in the arm. Jan believes Pat's anger was the reason why she was hurt and reported a domestic violence complaint to the Title IX coordinator because of this event.

Copyright: 2020 Beverly Baligad. All rights reserved.  
Copyright: 2020, Beverly Baligad. All Rights Reserved.

17

---

---

---

---

---

---

---


---

---

---

Slide  
18

**Poll #2**



Under the new regs, would the behavior by Pat, (as described in the scenario) be considered domestic violence? **Choose the best response.**

- a.) No. It should be dating violence.
- b.) Yes. Jan was injured.
- c.) No. There was no intent to hurt Jan.
- d.) Yes.

Copyright: 2020 Beverly Baligad. All rights reserved.

18

---

---

---

---

---

---

---

---


---

---

Slide  
19

**Scope of Recipient's Educational Program or Activity** [34 CFR 106.44(a)]

- A. "A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient..."
- B. "Education program or activity"
- C. Substantial control over respondent and context of sexual harassment



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

19

---

---

---

---

---

---

---

---


---

---

Slide  
20

**General Requirements- "Grievance Process"**

- A. Equitable treatment of parties [34 CFR 106.45(b)(1)(i)]
- B. Objective evaluation of all evidence [34 CFR 106.45(b)(1)(ii)]
- C. Train Coordinators, Investigators & Adjudicators [34 CFR 106.45(b)(1)(iii)]
- D. Presumption of innocence [34 CFR 106.45(b)(1)(iv)]
- E. Reasonably prompt grievance process timeframes [34 CFR 106.45(b)(1)(iv)]



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

20

---

---

---

---

---

---

---

---


---

---

Slide  
21

**General Requirements- "Grievance Process" (cont'd)**

- F. Describe or list possible sanctions or remedies- post finding of responsibility [34 CFR 106.45(b)(1)(vi)]
- G. Standard of evidence; process and permissible bases for parties to appeal [34 CFR 106.45(b)(1)(vii)]
- H. Range of supportive measures available to both parties [34 CFR 106.45(b)(1)(viii)]



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

21

---

---

---

---

---

---

---

---


---

---

Slide  
22

**General requirements: Notifications  
(Formal Complaints)**

- A. Written notification of institution's grievance process and informal processes [34 CFR 106.45(b)(2)(i)(A)]
- B. Notice of allegations of potential sexual harassment; sufficient details of the incident and involved parties (if known) [34 CFR 106.45(b)(2)(i)(B)]
- C. Mandatory disclosure statements [34 CFR 106.45(b)(2)(i)(B)]
- D. Parties' ability to have an advisor present (may be a lawyer) [34 CFR 106.45(b)(2)(i)(B)]



BEVERLY V BALIGAD

Copyright 2013-2020 Beverly Baligad. All rights reserved.

22

---

---

---

---

---

---

---

---


---

---

Slide  
23

**General requirements: Notifications  
(Formal Complaints)**

- E. Ongoing notice (with sufficient information) if new allegations will be investigated [34 CFR 106.45(b)(2)(ii)]
- F. Notice of dismissal, if applicable [34 CFR 106.45(b)(3)(iii)]
  - Mandatory dismissal; **"must"** dismiss [34 CFR 106.45(b)(3)(i)]
  - Permissive dismissal; **"may"** dismiss [34 CFR 106.45(b)(3)(ii)]
  - If dismissal, institution must promptly send written notice of the dismissal and reasons simultaneously to parties [34 CFR 106.45(b)(3)(iii)]



BEVERLY V BALIGAD

Copyright 2013-2020 Beverly Baligad. All rights reserved.

23

---

---

---

---

---

---

---

---


---

---

Slide  
24

**Investigations**

- A. Responsibility for burden of proof and burden of gathering evidence; respect privileged info [34 CFR 106.45(b)(5)(i)]
- B. Equal opportunity to present witnesses and evidence (inculpatory & exculpatory) [34 CFR 106.45(b)(5)(ii)]
- C. Restricts use of "gag orders" so parties can gather and present relevant evidence [34 CFR 106.45(b)(5)(iii)]
- D. Provide parties with the same opportunities to have advisors present for any meetings [34 CFR 106.45(b)(5)(iv)]



BEVERLY V BALIGAD

Copyright 2020 Beverly Baligad. All Rights Reserved.

24

---

---

---

---

---

---

---

---

---

---




Slide  
25

**Investigations (cont'd)**

E. Provide expected advisors information and sufficient time to prepare for meeting dates, times and purpose  
*[34 CFR 106.45(b)(5)(v)]*

F. Opportunities for parties to inspect and review ALL evidence gathered relating to the formal complaint  
*[34 CFR 106.45(b)(5)(vi)]*

G. Create an investigative report that fairly summarizes relevant evidence; provide the report 10 days prior to any hearing  
*[34 CFR 106.45(b)(5)(vii)]*



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

25

---

---

---

---

---

---

---

---

---


---

Slide  
26

**Hearings- Higher Ed**

A. Postsecondary institutions *[34 CFR 106.45(b)(6)(i)]*

- Must provide for a live hearing
- Decision Maker (DM) must permit advisors (never the parties) to ask the other party and witnesses relevant follow up questions, including those that challenges the credibility of a witness [aka "cross examination"]
- If a party does not have an advisor, the institution must provide one who can engage in cross examination appropriately
- Cross examination must be conducted at the hearing orally, and in real time
- DM must make a determination regarding relevancy; if question will not be allowed, the DM must explain why on the record



BEVERLY V BALIGAD

Copyright 2013, 2020 Beverly Baligad. All rights reserved.

26

---

---

---

---

---

---

---

---

---


---

Slide  
27

**Hearings- K-12 (cont'd)**

B. K-12 institutions *[34 CFR 106.45(b)(6)(ii)]*

- MAY provide for a live hearing (permissive)
- Must send the investigative report to both parties and allow each party to submit written relevant questions of any party or witness
- Must provide each of the parties/witnesses sufficient time to respond to the questions and provide each party with the responses
- If DM excludes any questions, the DM must explain to the party who asked the question why the question will not be sent to the party/witness



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

27

---

---

---

---

---

---

---

---

---


---

Slide  
28

**Hearings (cont'd)**

C. Written determination regarding responsibility must include: [34 CFR 106.45(b)(7)(ii)(A-F)]

- identification of allegations of potential of sexual harassment; and
- description of the procedural steps taken; and
- findings of fact supporting the determination; and
- conclusion regarding the application of the institution's code of conduct (policy) to the facts; and
- statement of (and rationale for) the result as to each allegation, including regarding responsibility and disciplinary sanctions imposed on the respondent; and



BEVERLY V BALIGAD

Copyright 2013/2020 Beverly Baligad. All Rights Reserved. 28

---

---

---

---

---

---

---

---

---

---


Slide  
29

**Hearings (cont'd)**

C. Written determination regarding responsibility must include: [34 CFR 106.45(b)(7)(ii)(A-F)]

- whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided to the complainant; and
- procedures and permissible bases for complainant and respondent to appeal

D. Written determination must be delivered to both parties simultaneously; information as to when the determination becomes finalized (after appeals or when date for appeal has lapsed) [34 CFR 106.45(b)(7)(iii)]



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved. 29

---

---

---

---

---

---

---

---

---

---


Slide  
30

**Appeals**

A. Both parties must have the ability to appeal a determination of responsibility or when the institutions has dismissed the formal complaint [34 CFR 106.45(b)(8)(i)]

B. Appeals must be for the following reasons: [34 CFR 106.45(b)(8)(i)(A-C)]

- Procedural irregularity that affected the outcome; or
- New information that was not available at the time the decision was made, that could affect the outcome of the matter; or
- Conflict of interest or bias by the Title IX Coordinator, investigator or DM that affected the outcome of the matter



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved. 30

---

---

---

---

---

---

---

---


---

---

Slide  
31

**B. Informal Resolution** [§106.45(b)(9), et seq.]

- A formal complaint must first be filed then the institution may offer to the parties an informal resolution option
- Institutions may not require parties to participate in the informal resolution process
- Informal resolution may not be required as a condition of continuing enrollment or continuing employment
- Institutions cannot require parties to waive their rights to an investigation or formal adjudication
- At any time, prior to reaching a determination regarding responsibility, informal resolution may be offered



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

31

---

---

---

---

---

---

---

---


---

---

Slide  
32

**B. Informal Resolution** [§106.45(b)(9), et seq.] **cont'd**

- The informal resolution process does not involve a full investigation and adjudication
- Written notification to both parties must include [§106.45(b)(9)(i-iii)]
  - the allegations, the requirements of the informal resolution process, etc.
  - obtain the parties voluntary written consent to engage in the informal resolution process
  - allegations may not involve allegations that an employee sexually harassed a student



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

32

---

---

---

---

---

---

---

---


---

---

Slide  
33

**B. Informal Resolution** [§106.45(b)(9), et seq.] **cont'd**

- Any party has the right to withdraw from the informal resolution process and resume the formal grievance process
- Once the grievance process commences, information with regard to the formal complaint or any information provided during the informal resolution process may be maintained and/or shared as allowed under the new regs.
- Informal resolution may include any form of mediation, arbitration, restorative justice
- Any records regarding informal resolution and the results must be kept and maintained for 7 years.



BEVERLY V BALIGAD

Copyright 2020, Beverly Baligad. All Rights Reserved.

33

---

---

---

---

---

---

---

---


---

---

Slide  
34

**B. Informal Resolution- Types**

- Mediation
- Restorative Justice (RJ)
- Facilitation
- Arbitration



BEVERLY V BALIGAD

Copyright, 2020, Beverly Baligad. All Rights Reserved.

34

---

---

---

---

---

---

---

---


---

---

Slide  
35

**C. Subsequent OCR Clarifications**

- ✓ OCR's Outreach, Prevention, Education and Nondiscrimination (OPEN) Center
- ✓ Information & clarification regarding final regs
- ✓ Blog also addresses technical issues submitted to the OPEN center by institutions
- ✓ Training and informational videos
- ✓ 4 specific blogs have been posted since May 6th, 2020



BEVERLY V BALIGAD

Copyright, 2020, Beverly Baligad. All Rights Reserved.

35

---

---

---

---

---

---

---

---


---

---

Slide  
36

**Subsequent OCR Clarifications (cont'd)**

- ✓ Posting of important info on websites [20200518]
- ✓ Requirement to continue investigations during the pandemic [20200521]
- ✓ Use of information when a party does not submit to cross-examination [20200522]
- ✓ Final regs are not retroactive [20200805]



BEVERLY V BALIGAD

Copyright, 2020, Beverly Baligad. All Rights Reserved.

36

---

---

---

---

---

---

---

---

---

---

Slide  
37

Finally,

- ✓ The new regs were adopted on May 6, 2020 amidst a global pandemic.
- ✓ The date ED expected institutions to be in compliance was August 14<sup>th</sup>, 2020.
- ✓ Institutions are scrambling to try to implement the new regs on campus; most are still working on it.
- ✓ Some institutions have not even begun to implement these changes- and there are a lot.



BEVERLY V BALIGAD

Copyright: 2020 Beverly Baligad. All Rights Reserved.

37

---

---

---

---

---

---

---


---

---

---


Slide  
38

**Poll #3:**



In your professional capacity [*employee at a funded institution subject to Title IX compliance, community member, victim's advocate, counselor, police officer, etc.*] how often do you think you might have to deal with a Title IX issue?  
**Choose the response that best reflects your situation.**

- a.) Less than 25% of the time
- b.) Between 26% and 50% of the time
- c.) Between 51% and 75% of the time
- d.) Between 76% and 99% of the time
- e.) 100%. I am in a specific Title IX related position in a school or campus.



BEVERLY V BALIGAD

Copyright: 2020 Beverly Baligad. All rights reserved.

38

---

---

---

---

---

---

---

---


---

---

Slide  
39

**Some suggestions:**

- Revisit institutional policies (which is important, of course!). Make sure they are in line with the new regs.
- Work on the low hanging fruit first!
- Update cross campus information that intersects or cross references any Title IX definitions or processes
- Review and update T9 structure & job descriptions.
- Prepare to deal with external parties during your Title IX processes.



BEVERLY V BALIGAD

Copyright: 2020 Beverly Baligad. All Rights Reserved.

39

---

---

---

---

---

---

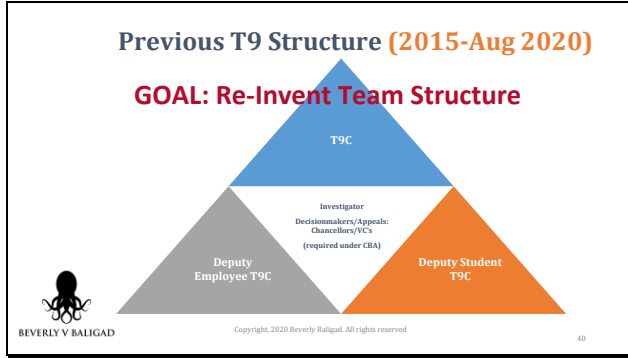
---

---

---

---

Slide  
40



---

---

---

---

---

---

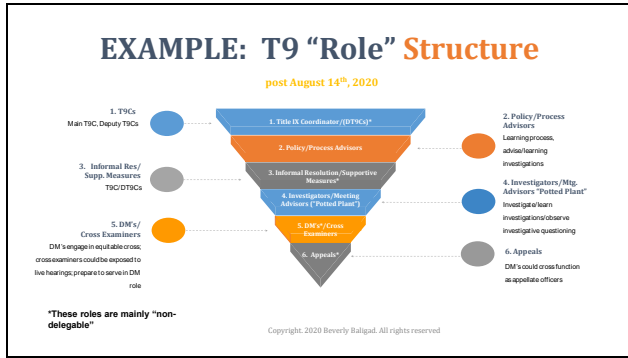
---

---

---

---

Slide  
41



---

---

---

---

---

---

---

---

---

---

Slide  
42

**Mahalo!**  
Any Questions?

**End of Day 2 of 4**

Sexual Violence:  
Let's make it Extinct!

BEVERLY V BALIGAD

Copyright: 2020, Beverly Baligad. All Rights Reserved.

42

---

---

---

---

---

---

---

---

---

---