

# **The New Title IX Final Regulations: What You Need To Know To Stay In Compliance Day 1**

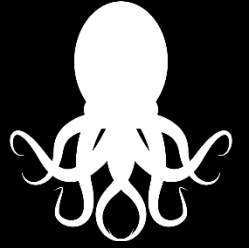
**Bev Baligad, J.D.**

**Presenter**

[bevbaligad@gmail.com](mailto:bevbaligad@gmail.com)



# Week 1 Program



## Day 1: (Today)

- A. The Intersection of Title IX and VAWA
- B. Title IX Background
- C. The New Title IX Regs: What Changed?

## Day 2: (Tomorrow)

- A. General Requirements
- B. Informal Resolution Process

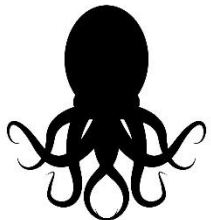
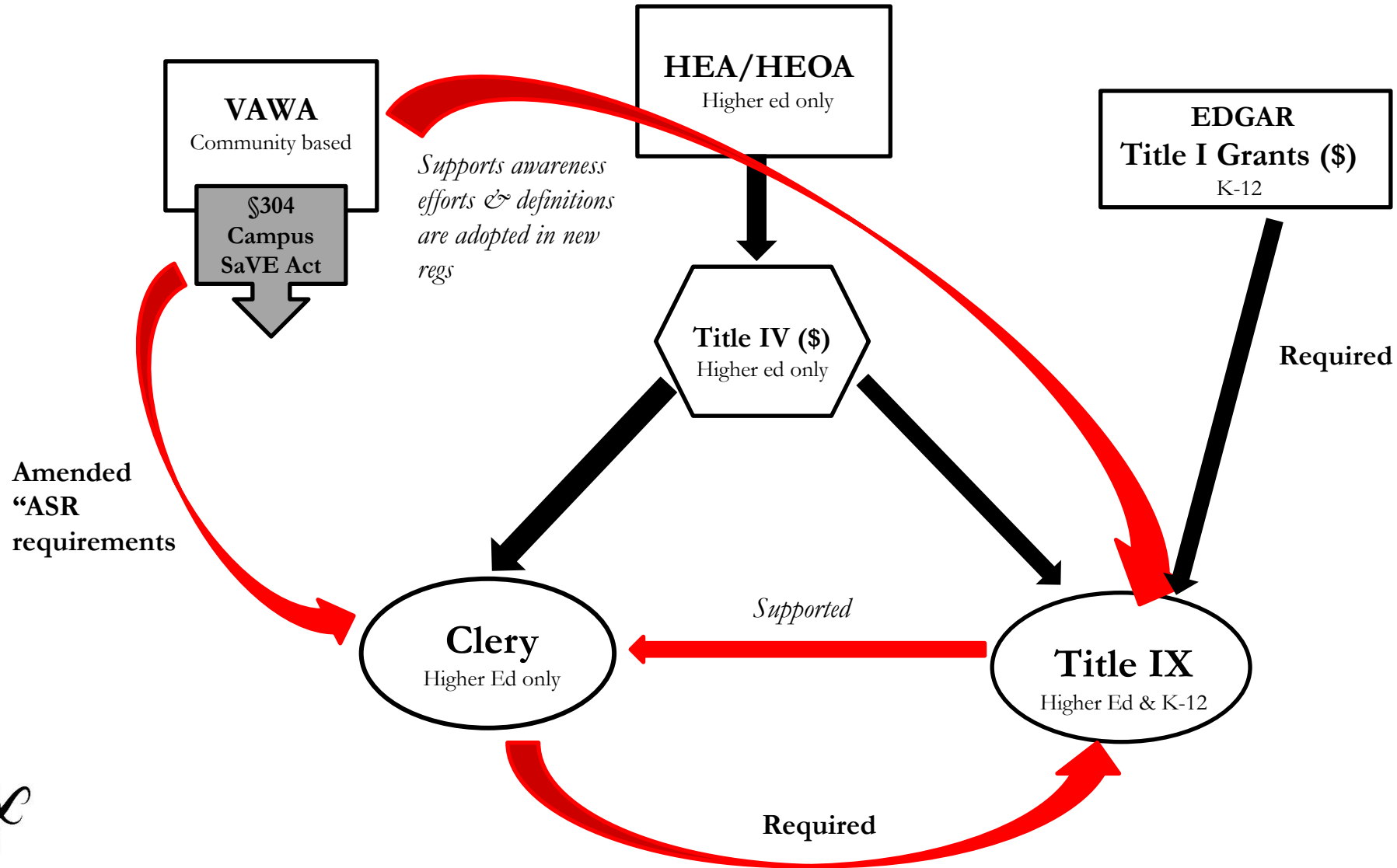
**\*This presentation is for general informational purposes only; it is not intended to be legal advice. Participants should consult with their general counsel before implementing any changes.**



# Day 1

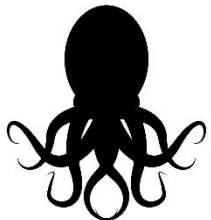
- A. The Intersection of Title IX, Clery and VAWA
- B. Title IX Background
- C. The New Title IX Regs Overview

# A. The Intersection: Title IX, Clery and VAWA



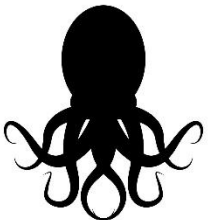
# Elementary and Secondary Education Act (ESEA)

- A. Purpose
- B. Enforcement agency  
(jurisdiction)
- C. Applies to?
- D. Relevance to institutions
- E. Non-compliance



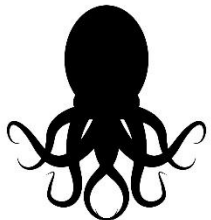
# Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)

- A. Purpose of the Clery Act
- B. Enforcement agency  
(jurisdiction)
- C. Applies to?
- D. Relevance to institutions
- E. Non-compliance



# The Federal Laws: Violence Against Women Act of 1994 (VAWA)/Campus Safety Violence Elimination (SaVE) Act

- A. Purpose of VAWA
- B. Enforcement agency (jurisdiction)
- C. Application to Higher Ed  
(specifically Section 304)
- D. Relevance to institutions
- E. Non-compliance



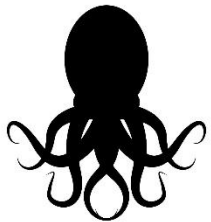
# [Some] VAWA Sections: A Broader Understanding

**Title I:** *Enhancing Judicial and Law Enforcement Tools to Combat Violence Against Women*

**Title II:** *Improving Services for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking*

**Title III:** *Services, Protection and Justice for Young Victims of Violence*

**Title IV:** *Violence Reduction Practices*



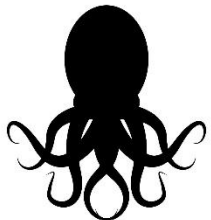
BEVERLY V BALIGAD





# Title IX of the Education Amendments Act of 1972

- A. Purpose of Title IX
- B. Enforcement agency (jurisdiction)
- C. Applies to?
- D. Relevance to institutions
- E. Non-compliance



BEVERLY V BALIGAD



# 5 P's of Title IX Compliance

(pre- Final Regs)



Policy

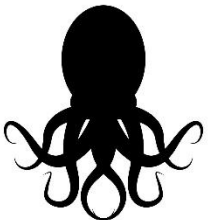
Process

People

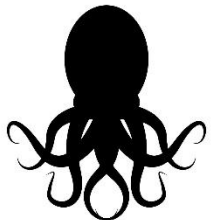
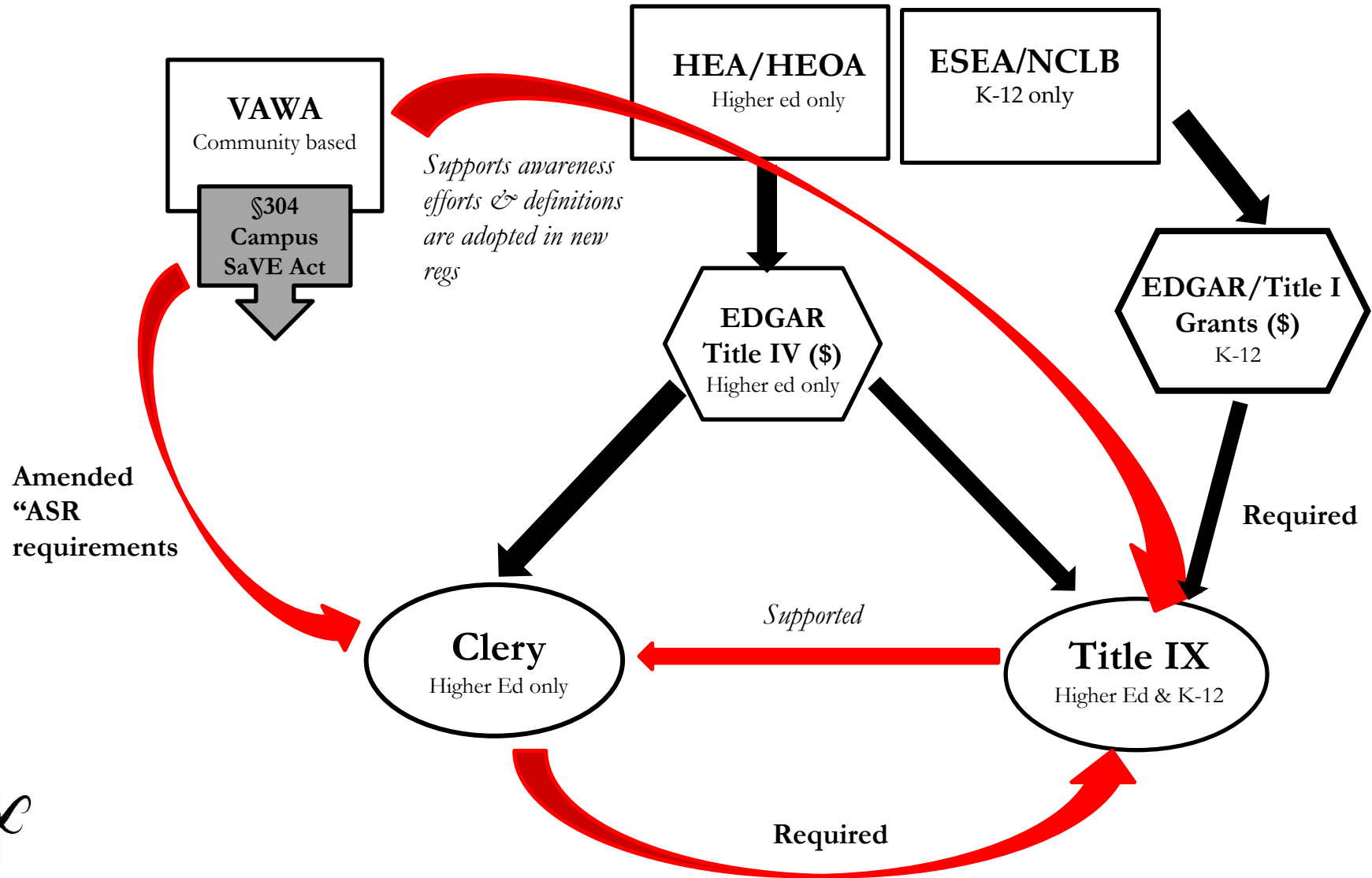
Professional Development\*

Programming\*

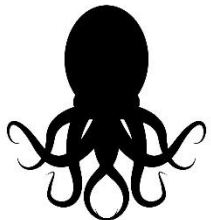
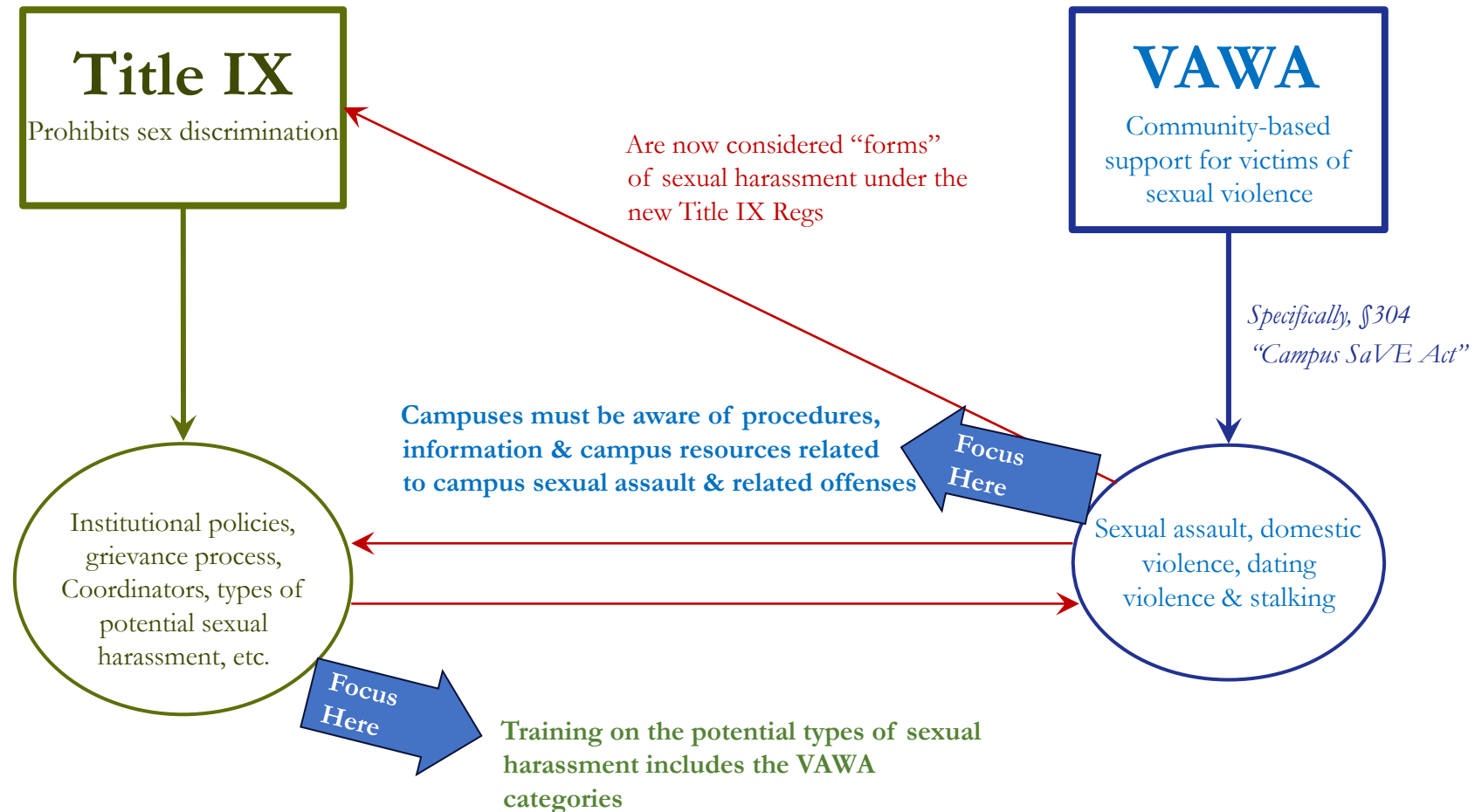
**\*These were implied; not express.  
There are changes in the final regs.**



# Remember the connection? Title IX and VAWA



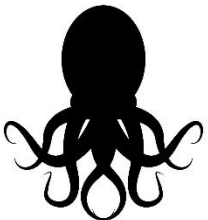
# Intersection Focus: Title IX and VAWA



# Basically...

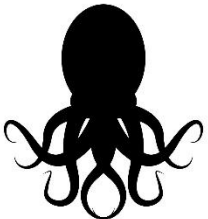
**Title IX focuses on the “training” of individuals who have responsibility within the Title IX processes, and the campuses on recognizing types of sexual harassment and how to report behavior**

**VAWA/Campus SaVE Act focuses on the “programming and awareness” efforts regarding sexual assault, domestic violence, dating violence, and stalking**



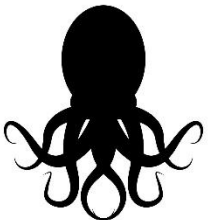
# Important Intersections

- A. Purpose of Title IX (process and training) and VAWA (programming and awareness) are different
- B. Title IX focuses on processes to address potential forms of sex/gender based discrimination, & address & end discrimination on campus if found
- C. Under the new Title IX regs, the new sexual harassment “types” were adopted using VAWA (Campus SaVE Act-Section 304) terminology
- D. Rape shield laws and legal privilege are now recognized under the new regs
- E. Due process, conflict of interest and unbiased requirements are also required



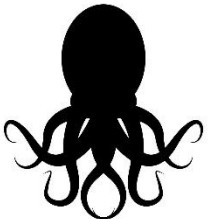
# B. Title IX Background

- Federal civil rights law forbidding discrimination based on sex or gender in programs receiving federal funding (spending power)
- Co-authored and sponsored by Hawaii's own Patsy T. Mink (D-HI)
- Passed in 1972 as part of the Education Amendments; was later known as the "Patsy T. Mink Equal Opportunity in Education Act"
- Wording is similar to wording used in the ADA/Section 504
- Applies to students, employees of the institution and 3<sup>rd</sup> parties or visitors



# Title IX prohibits sex discrimination in:

- (not just) Athletics
- Programs
- Employment
- Admission
- Student activities
- Virtually, every/any service provided at an institution
- Processes and procedures



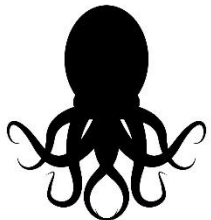


**TITLE IX**  
40 YEARS OF CHANGE  
**Sports Illustrated**

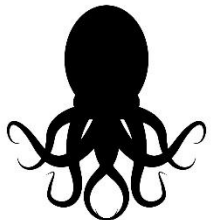
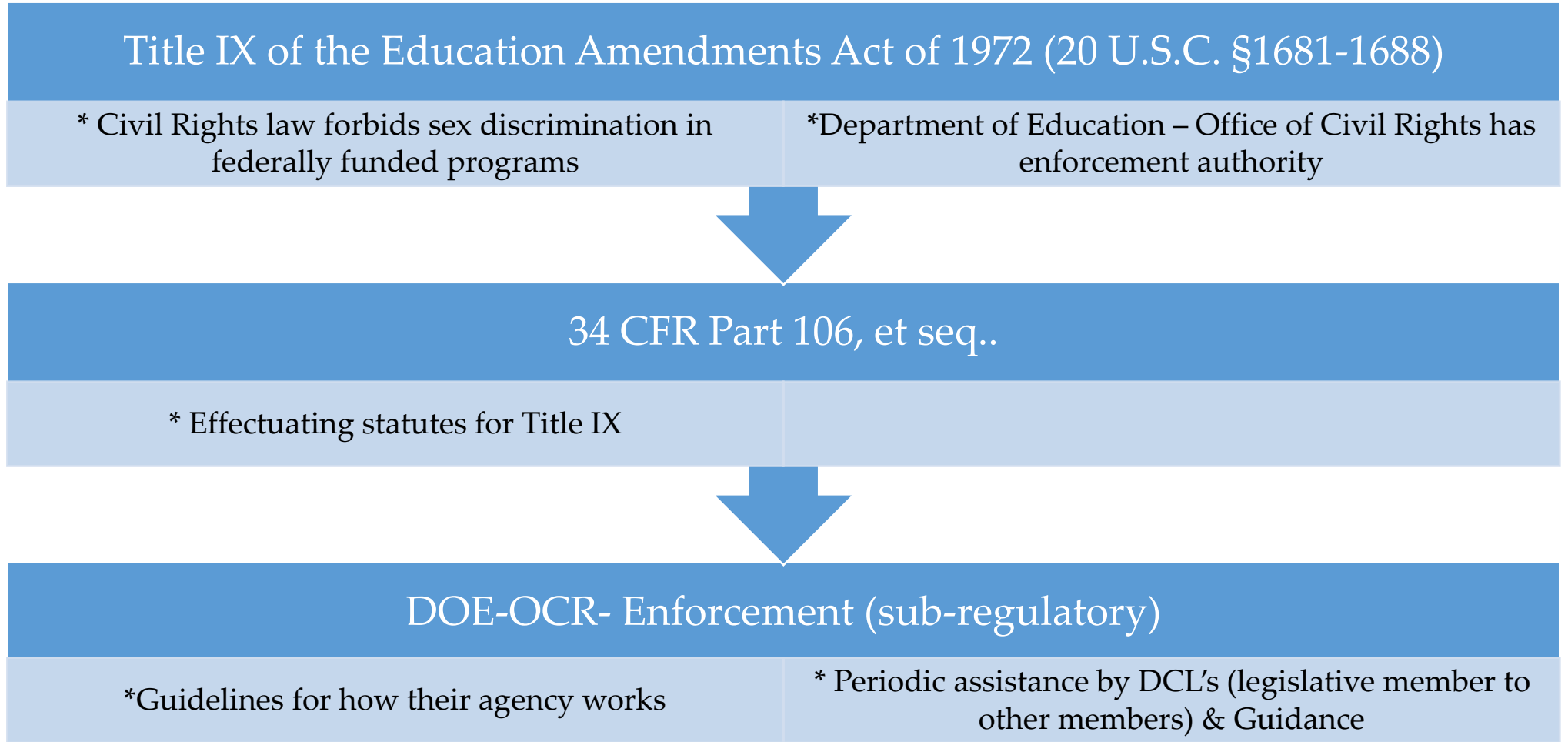
**“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance....”**

—JUNE 23, 1972

**So, what would you need to do in order to be in “compliance?”**



# Title IX framework



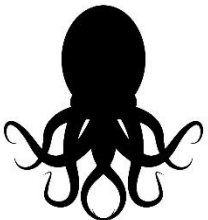
# Differences in Title IX Enforcement Agencies:

## Dept. of Education

- K-12 & Post-secondary ed recipients
- Compliance
- Means to resolve issues/complaints
- If fail to fulfill Voluntary Res Agreement, seek assistance from DOJ to enforce

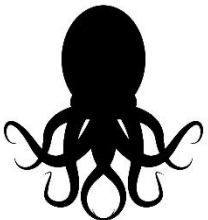
## Dept. of Justice

- Federal civil rights
- Enforcement
- Files civil lawsuits against government agencies in federal court
- Federal Aid recipients could lose their funding



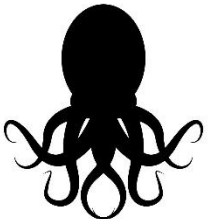
# 3 Ways ED-OCR Accomplishes its Mission:

- ✓ Investigate & resolve complaints regarding Title IX when the complaint involves “recipients”
- ✓ Compliance reviews
- ✓ Provide technical assistance



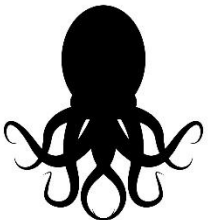
# OCR's Jurisdiction

- Colleges and universities
- State education agencies
- Elementary and secondary school systems (public and private)
- State vocational rehabilitation agencies



# Potential Liabilities/Issues for Title IX Non-compliance

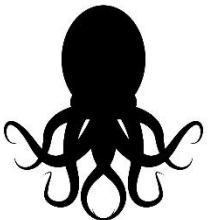
- Threat of law suits (injunctions & damages)
- Threat of review by OCR (institutional “mad scramble”)
- Threat to an institution’s reputation
- Threat of loss of all federal funding
- For most folks, the inevitable “voluntary resolution agreement” (302)



# How do institutions determine what it needs to do in order to be in compliance?

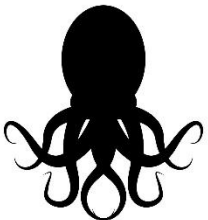
- ✓ Wording of the law
- ✓ Court Cases
- ✓ Federal Regulations (CFR)
- ✓ Ongoing training & professional development
- ✓ Networking with others in the field
- ✓ Some sub-regulatory guidance

**What are some examples of “sub-regulatory” guidance?**



# Cases that helped shape Title IX:

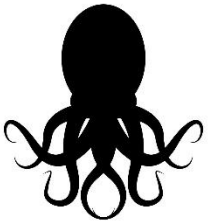
- Cannon v. University of Chicago (1979)-HE
- Franklin v. Gwinnett Public Schools (1991)-K12
- Gebser v. Lago Vista (1998)-K12
- Davis v. Monroe County Board of Education (1999)-K12





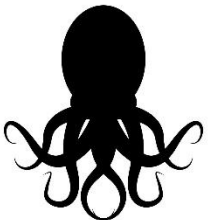
# Cannon v. University of Chicago (1979)

- Background
- Issue
- Court held



# Franklin v. Gwinnett (1991)

- Background
- Issue
- Court held

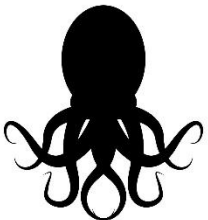


# Gebser v. Lago Vista (1998)

-Background

-Issue

-Court held

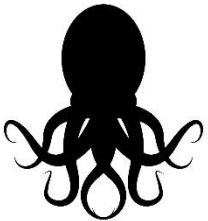


# Davis v. Monroe Cty. Bd. (1999)

-Background

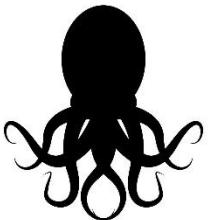
- Issue

-Court held

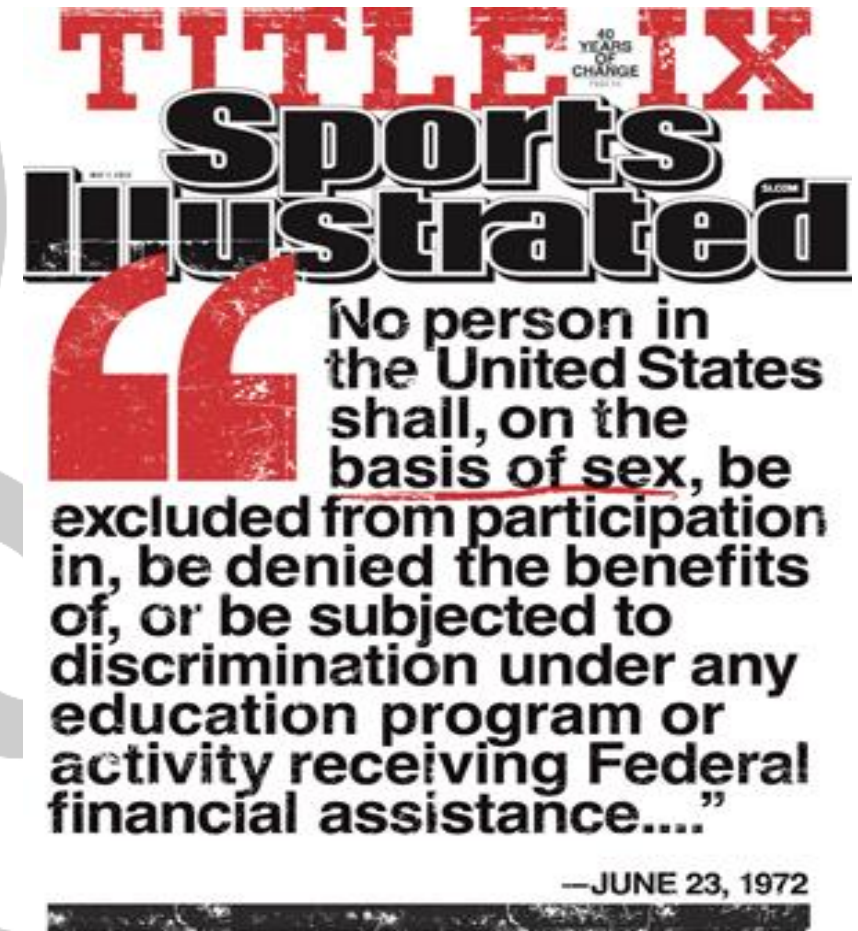


# Why are these cases relevant?

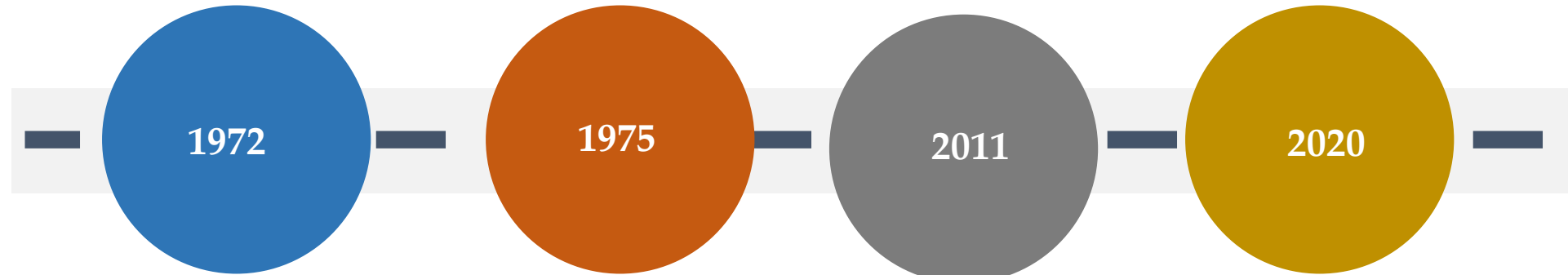
- Plaintiffs can sue under Title IX (Cannon)
- Monetary damages are available under the right conditions (Franklin)
- In order to be successful, a plaintiff will need to show that an official of the institution had “actual notice” and acted with “deliberate indifference” (Gebser)
- In cases of student on student sexual harassment (in addition to all of the above), the harassment must be severe, pervasive, and objectively offensive that it deprives a victim access to an education (Davis)



## C. The New Title IX Regs: What changed?



# Title IX Regs Timeline



## Title IX

Congress passes Title IX of the Education Amendments Act; focuses on prohibiting sex based harassment in educations receiving federal funding

## Implementing Regs

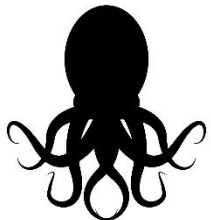
Title IX implementing regs were finalized in 1975; focus was more on athletics

## 2011 Dear Colleague Letter

Obama administration focuses on Title X; reviews 52 institutions and issues April 2011 DCLs & Significant Guidance

## New Title IX Regs

NPRM published in November 2018; Final rules published on May 6, 2020; Aug. 14<sup>th</sup> compliance date



# Remember this?

## 5 P's of Title IX Compliance (pre- Final Regs)



Policy

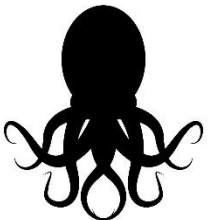
Process

People

Professional Development\*

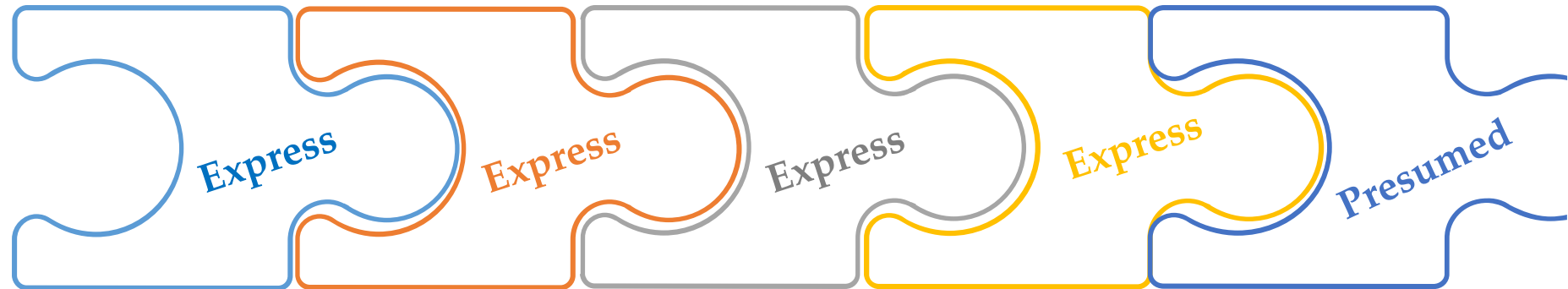
Programming\*

**\*These were implied; not express.  
There are changes in the final regs.**





# 5 P's of the New Title IX Regulations Puzzle



**POLICY**

- 2. New Definitions
- 3. General Requirements

**PROCESS**

- 3. General Requirements
- 4. Notifications
- 5. Investigations
- 6. Hearings

**PEOPLE**

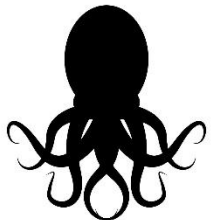
- 3. General Requirements
- 6. Hearings

**PROFESSIONAL DEVELOPMENT**

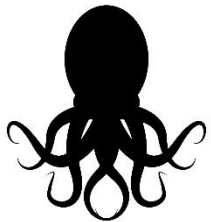
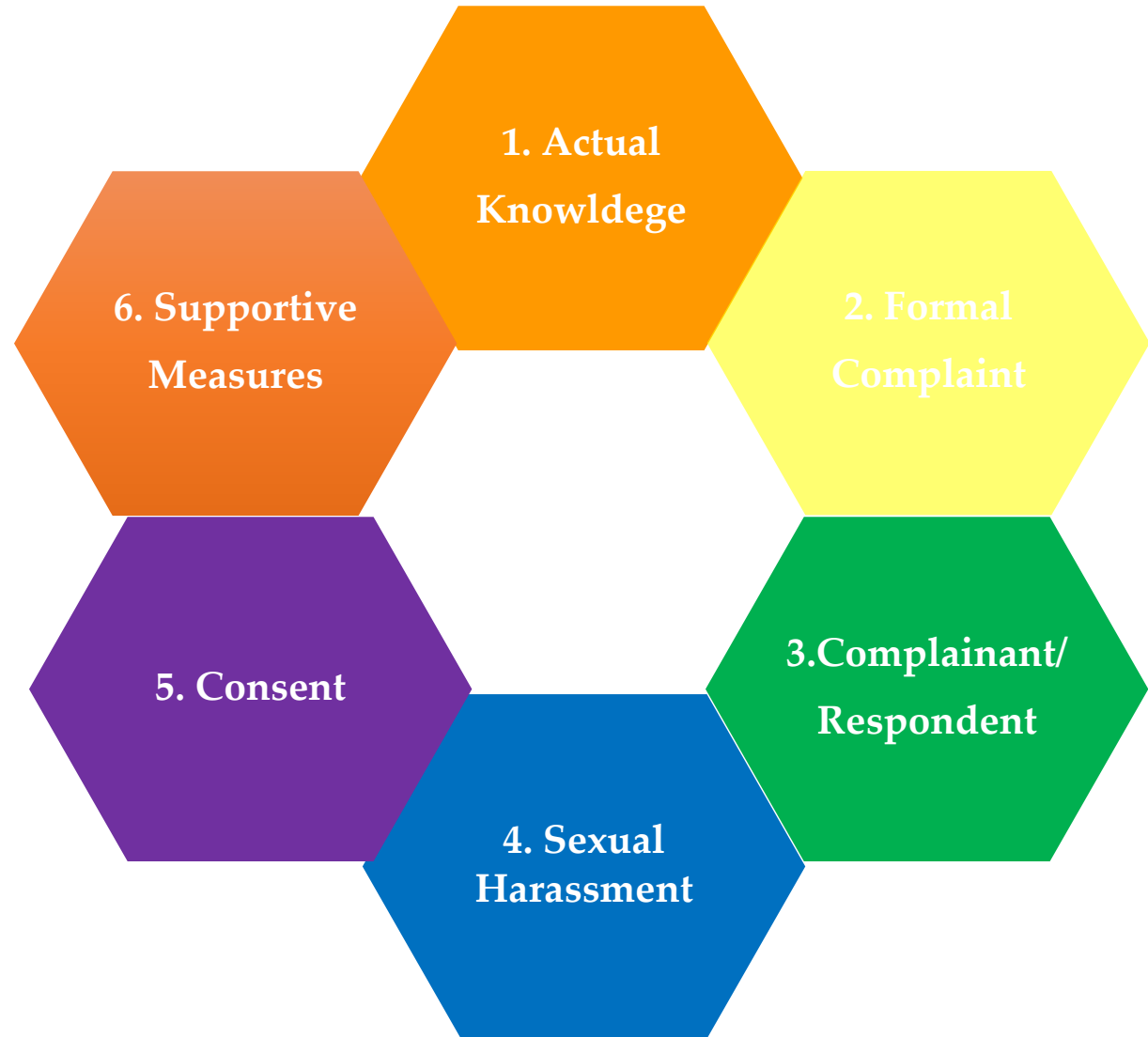
- 3. General Requirements

**\*PROGRAMMING**

- 3. General Requirements

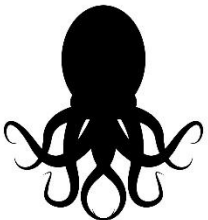


# New Definitions



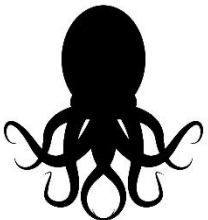
# New General Requirements includes:

- When an institution has received notice
- When it may be required to respond to an incident regarding sexual harassment
- When and how a student who poses an “immediate threat” (under the Title IX process) may be removed
- ...and more!



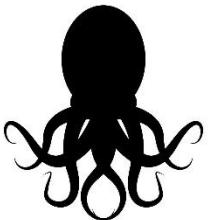
# New Notification Requirements

- Requirements must be in writing to both parties
- What must be included in the notifications to the parties
- When the information needs to be sent
- Who can participate in the process
- ...and more!



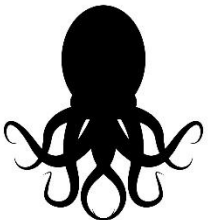
# New Investigation Procedures

- Who cannot be an investigator
- How the investigator must conduct their investigation
- Role of the investigator
- Evidence that may or may not be used
- What happens with the evidence once it is collected
- Who does the evidence need to be sent to for review
- ...and more!



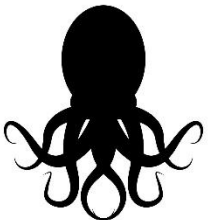
# New Live Hearing/Hearing Procedures

- Who is required to hold a “live hearing”
- What must happen before the hearing occurs
- Who can be a decision maker or on a hearing panel
- Types of questions that can/cannot be asked
- Who can attend the live hearings
- ...and more!



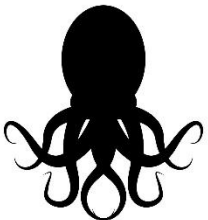
# New Appellate Requirements

- Who cannot serve as an appellate officer
- Basic reasons for why an appeal will be granted
- Who can appeal
- What information must be provided in the appeals decision letter



# New Recordkeeping Requirements

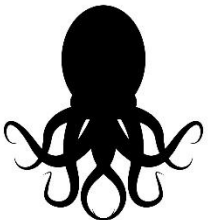
- What information needs to be kept by the institution?
- How long does the information need to be kept?
- In what format will the information need to be stored?





# New Training Requirements

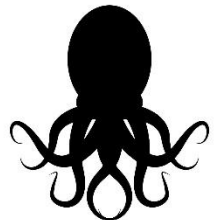
- Who will need to be trained on the campus?
- What types of information will they need to be trained on?
- Where will the training powerpoints be stored and who can be able to see them?



# Mahalo!

*Any Questions?*

## End of Day 1 of 4



BEVERLY V BALIGAD

