



Understanding What's New in the 2024 Title IX Regulations

Association of Biblical Higher Education 2024 Annual Meeting
Mark Griffin – Director of Title IX – Moody Bible Institute

Today's Presenter

February 16, 2024

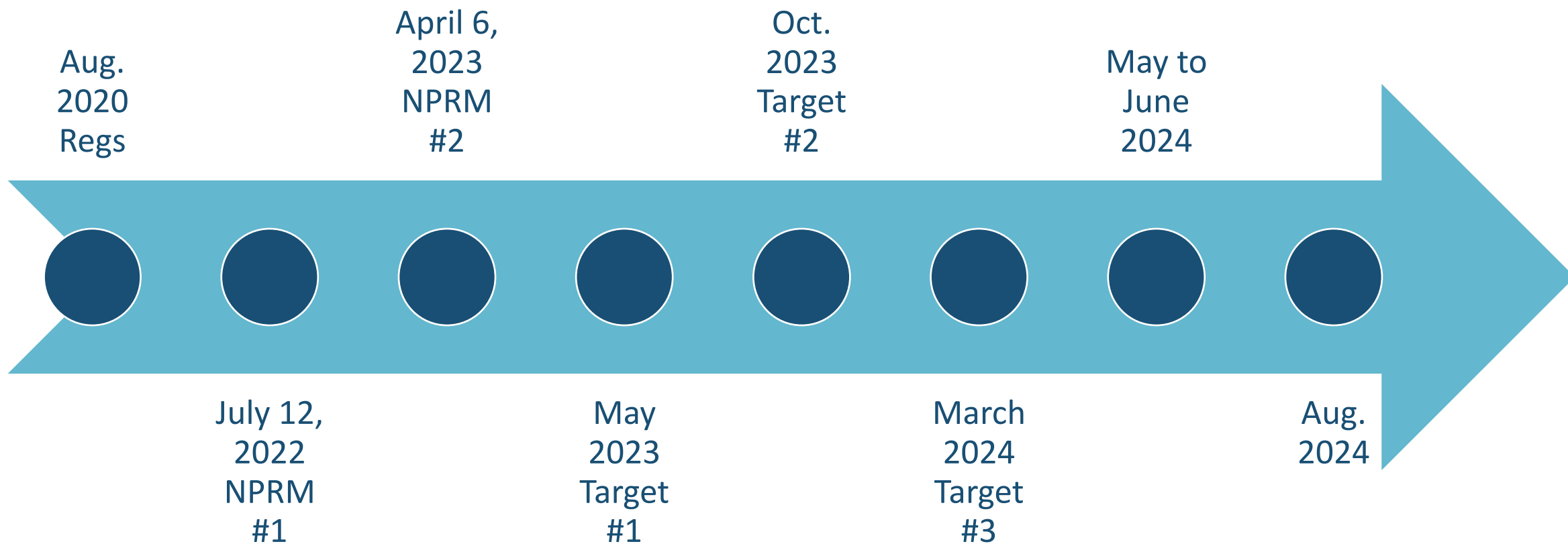


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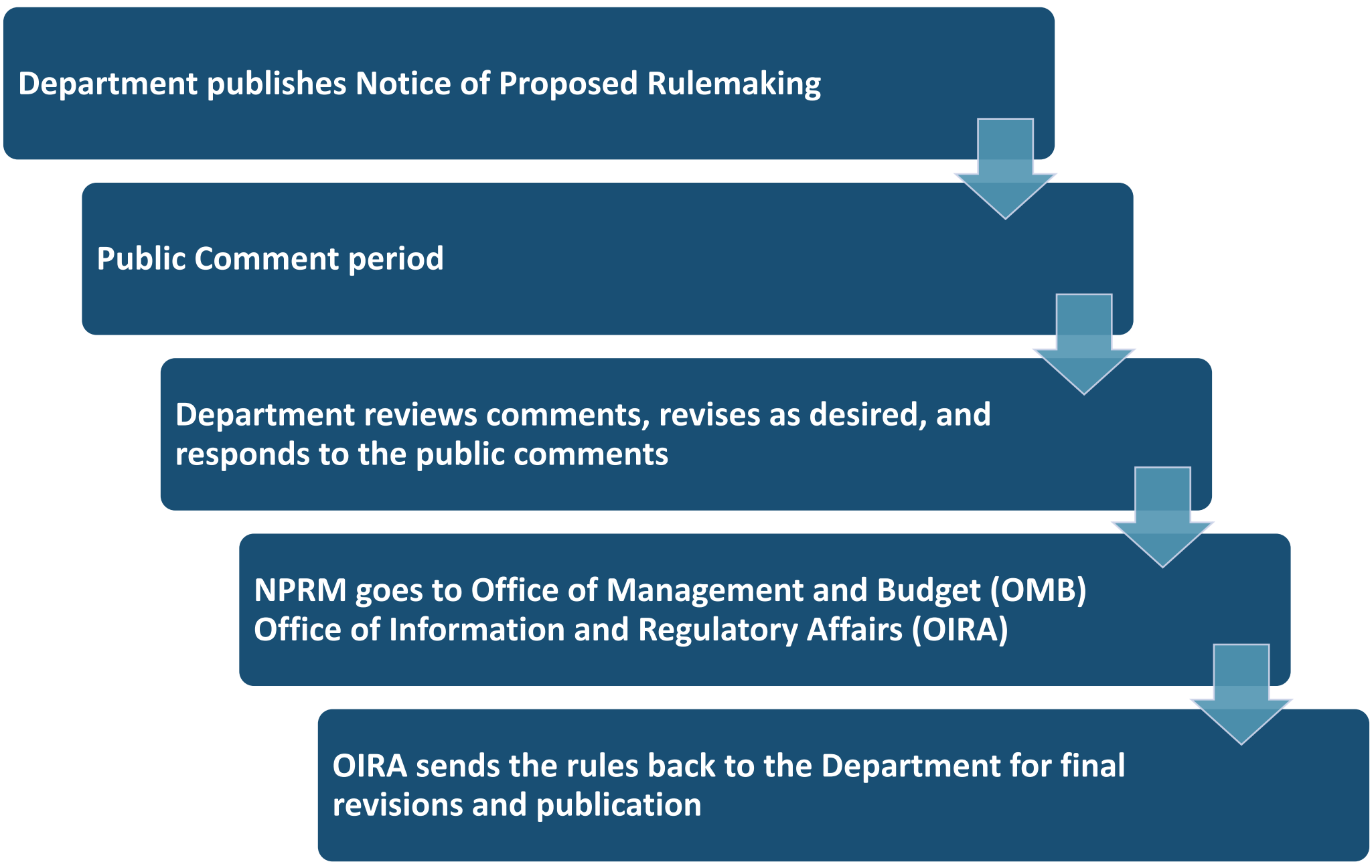


Process of Creating New Federal Regulations

Notice of Proposed Rulemaking (NPRM)



Department publishes Notice of Proposed Rulemaking



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graph TD; A[Department publishes Notice of Proposed Rulemaking] --> B[Public Comment period]; B --> C[Department reviews comments, revises as desired, and responds to the public comments]; C --> D["NPRM goes to Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA)"]; D --> E["OIRA sends the rules back to the Department for final revisions and publication"]
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The diagram is a vertical flowchart with five steps, each in a dark blue rounded rectangle. The steps are connected by light blue downward-pointing arrows. The first step is at the top, and each subsequent step is indented further to the right, creating a descending staircase effect. The text is white and bold.

Public Comment period

Department reviews comments, revises as desired, and responds to the public comments

**NPRM goes to Office of Management and Budget (OMB)
Office of Information and Regulatory Affairs (OIRA)**

OIRA sends the rules back to the Department for final revisions and publication

Public Comments

- **2020 Regulations - 124,000 public comments**
- **2024 Regulations – 390,000 public comments**
 - **240,000 comments for the main Title IX NPRM**
 - **150,000 comments to the Title IX athletic NPRM**

Changes in the Proposed Federal Regulations Expanding the Reach of Title IX

Re-Definition of “Sex”

“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”

Proposed § 106.10

Also contained within the new definition of sex-based harassment - Proposed § 106.2

Sexual Harassment

2020 Regulations Quid Pro Quo

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.

Section 106.30

Sex-Based Harassment

2024 Regulations Quid Pro Quo

An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Proposed § 106.2

Sexual Harassment

2020 Regulations Hostile Environment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

Section 106.30

Sex-Based Harassment

2024 Regulations Hostile Environment

Unwelcome sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment).

Proposed § 106.2

Education Programs and Activities

2020 Regulations

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Does not include incidents outside of the United States

Section § 106.44(a)

Education Programs and Activities

2024 Regulations

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Conduct that is subject to the recipient's disciplinary authority
- "A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even if sex-based harassment contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States."
- Proposed § 106.11

Informal Resolutions

- Available anytime prior to a determination of a policy violation
- Discretion to offer it lies with the institution
- Must be voluntary
- Not allowed when the Respondent is an employee and the Complainant is a student
- No Formal Complaint is required
- May offer whenever an institution receives information about conduct that may constitute sex discrimination or a complaint of sex discrimination is made



Live Hearings

2020 Regulations
Section 106.45

Live Hearings or Individual Hearings

2024 Proposed Regulations
Proposed § 106.46

Duty and Notice

“A recipient must take prompt and effective action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects.”
Proposed § 106.44(a)

Currently, a recipient that has actual knowledge of sexual harassment must respond only in a manner that is not deliberately indifferent.

Duty and Notice

Who Must Report?

1. Employee with authority to institute corrective measures – Report to TIXC (Current regulations)
2. Employee who has responsibility for administrative leadership, teaching, or advising
If student complainant – Report to TIXC
If employee complainant – Report to TIXC or Provide Contact Information
3. All other employees – Report to TIXC or Provide Contact Information

Does not apply to Confidential Resources

Proposed § 106.44(b)

Religious Exemptions

Religious Exemptions

20 U.S.C. 1681(a)(3)

This section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization

Religious Exemptions

34 CFR 106.12

(a) This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

Religious Exemptions

34 CFR 106.12

- Religious Exemption (claimed not applied for)
- Institutions can submit a request for assurance from OCR
- Institution must be controlled by a religious organization
- Cannot apply to the entirety of Title IX – individual sections or provisions
- Must explain how its religious beliefs conflict with the specific section or provision

Religious Exemptions

34 CFR 106.12 – Controlled by a Religious Organization

- Institution is a school or department of divinity, or
- Faculty, students, or employees are required to be members of the controlling religious organization, or
- Explicit statements in official publications regarding being part of a religious organization, or
- Institution has a doctrinal statement that community members must affirm and adhere to, or
- Institutional mission statement that is based on religious beliefs, or
- Any other evidence to show the institution is controlled by a religious organization

How to Prepare

Assemble a Team

Policy Review and Revision Teams

Who will be most affected by changes?

- Title IX
- Student Life
- Human Resources
- Faculty
- Public Safety
- Legal
- Counseling
- Campus Leadership

- **Review your current policies and procedures (Students and Employees)**
- **What works well and what doesn't**
- **Changes in State law**
- **Delete unnecessary language**
- **Opportunity for one large revision**

Review Current Policy

Identify Forms and Templates

- **Notification of Report**
- **Summary of Supportive Measures/Intake Meeting**
- **Email Templates**
- **Formal Complaint**
- **Notice of Allegations**
- **Notice of Interview**
- **Notice of Investigative Report or Evidence**
- **Written Determination**
- **Appeal Decision**

How will your institution handle the re-definition of “sex”?

OCR Notice of Interpretation
June 22, 2021

OCR will interpret Title IX in the same manner as the Supreme Court interpreted Title VII in *Bostock v Clayton County* to include sexual orientation and gender identity

**The State of Tennessee v. United States
Department of Education**

**Preliminary Injunction for 20 States -
Alabama, Alaska, Arizona, Arkansas, Georgia,
Idaho, Indiana, Kansas, Kentucky, Louisiana,
Mississippi, Missouri, Montana, Nebraska,
Ohio, Oklahoma, Tennessee, South Carolina,
South Dakota, and West Virginia**

Religious Exemptions Preparation

Official, published statements about religious tenets or affiliation

Student, Staff, and Faculty doctrinal statement affirmations

Student, Staff, and Faculty community covenant affirmations

Explicit statements on biblical, human sexuality

Admissions and hiring criteria includes support for the school's religious beliefs

Policies, handbooks (students and employees), training material should denote the school's religious beliefs



“We comply with all applicable laws pertaining to nondiscrimination on the basis of race, color, national origin, sex, age, disability, and any other applicable legally protected category. As a religious institution, we have the right to, and do, require that employees hold beliefs consistent with our Doctrinal Statement and conduct themselves in a manner consistent with our religious beliefs, as explained in our Community Standards.”

How will your institution handle the re-definition of “sex”?



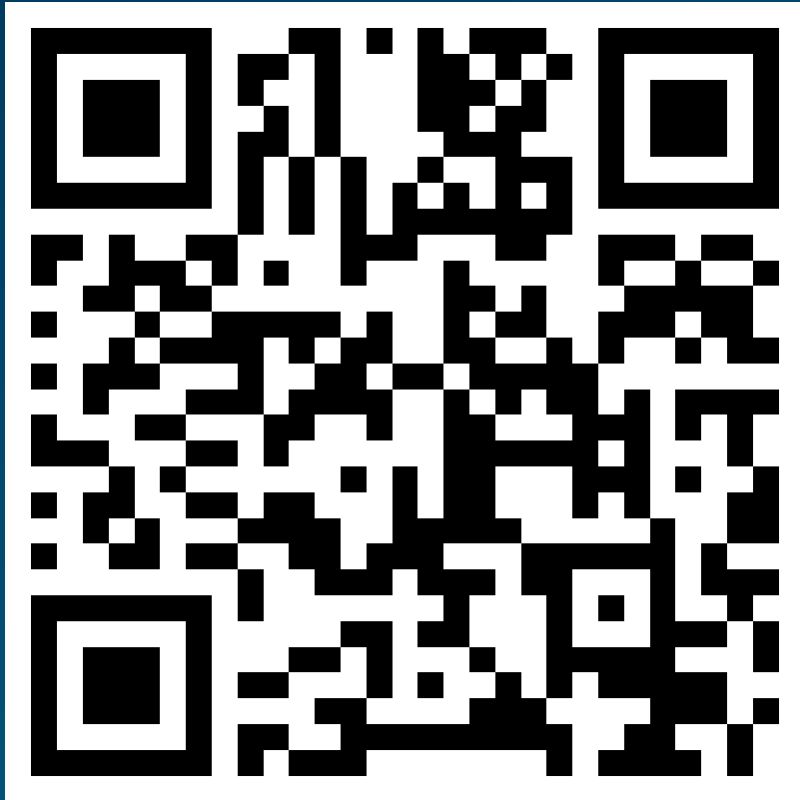
Relent

Retreat

Resist

Christian Title IX Consortium

<https://forms.office.com/r/dyEUXvGpRx>



- 57 members
- 38 Christian colleges and universities
- Started January 2023
- Four meetings so far, including
 - - Greg Baylor – ADF
 - - Rosaria Butterfield
- Encouragement, Training, Prayer

ABHE Sexual Harassment and Title IX Training

<https://www.abhe.org/leadership-development/leadership-development-conferences/>

March 25 – 27, 2024 – Orlando, Florida

- **Session 1 – Biblical Foundations and the History of Title IX**
- **Session 2 – Changes in the 2024 Title IX Regulations**
- **Session 3 – Beginning the Process in the Report and Intake Phases**
- **Session 4 – The Pivotal Role of the Investigation and the Investigators**
- **Session 5 – Ensuring a Fair and Meaningful Adjudication and Appeal Process**
- **Session 6 – Other Important Topics and Considerations**

“And it is my prayer that your love may abound more and more, with knowledge and all discernment, so that you may approve what is excellent, and so be pure and blameless for the day of Christ, filled with the fruit of righteousness that comes through Jesus Christ, to the glory and praise of God.”

Philippians 1:9-11

Questions?

Helpful Links

Moody Bible Institute - Title IX

<https://www.moody.edu/titleix/>

Alliance Defending Freedom

<https://adflegal.org>

Summary of Major Changes in the Proposed Regulations

<https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm-chart.pdf>

Department of Education's Summary of Religious Exemptions from Title IX

<https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/index.html>

