

 $6033 \, \text{West Century Boulevard}, \\ 5^{\text{17}} \, \text{Floor} \\ \text{Los Angeles, California } 90045 \\ \text{T: } (310) \, 981\text{-}2000 \\ \text{F: } (310) \, 337\text{-}0837$

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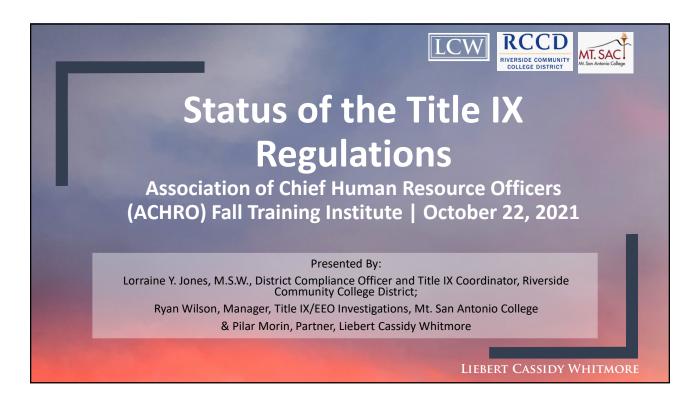
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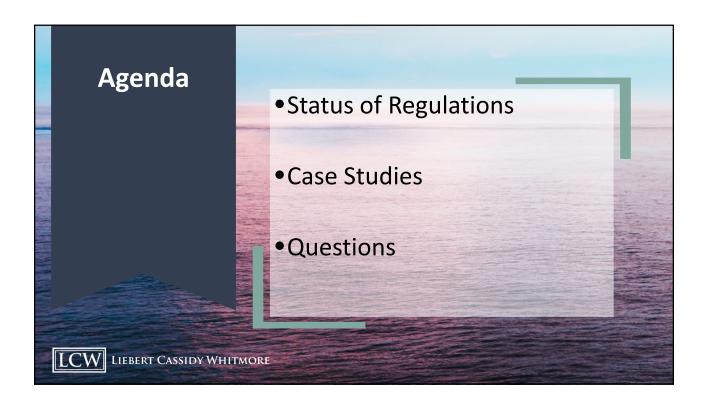
Status of the Title IX Regulations

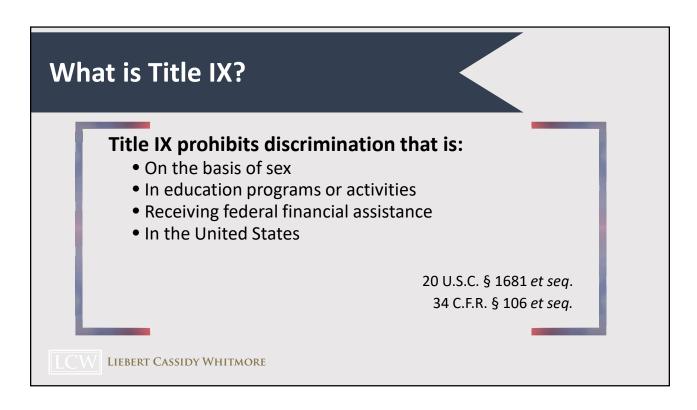
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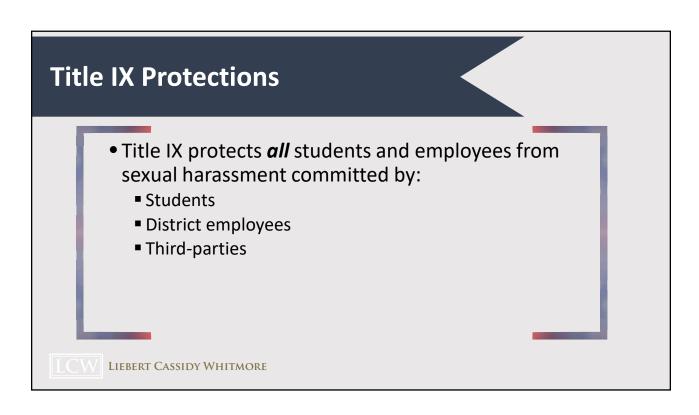
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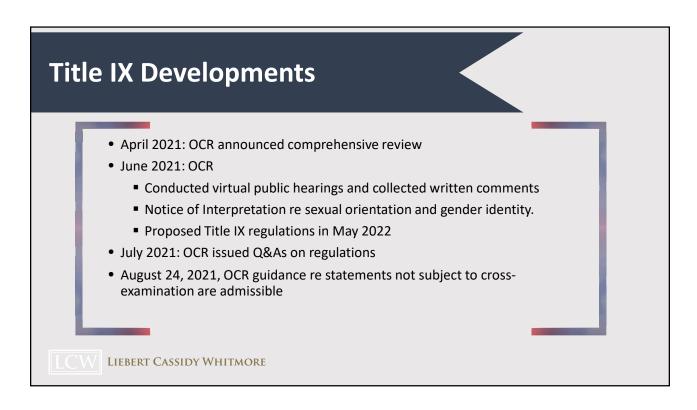
Pilar Morin & Ryan Wilson & Lorraine Jones

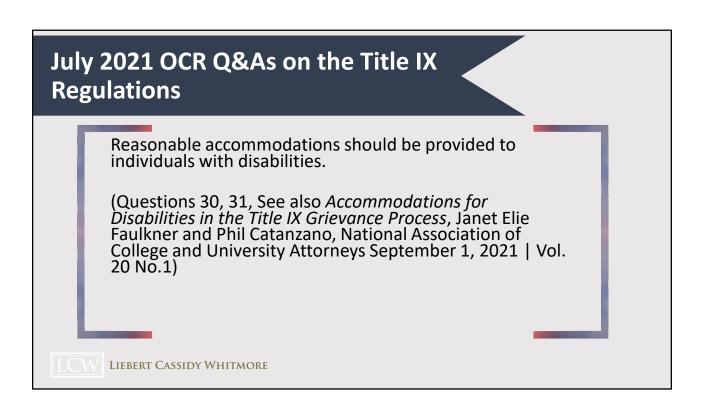


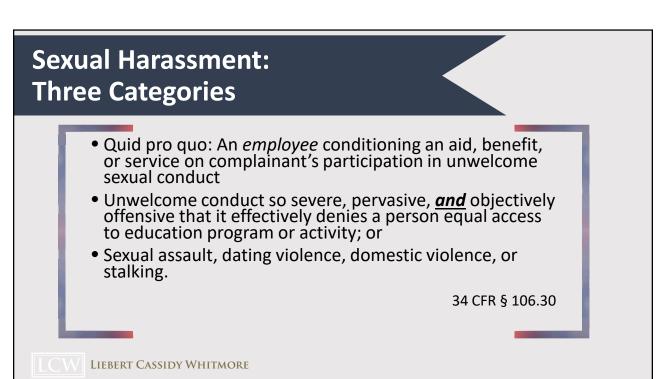


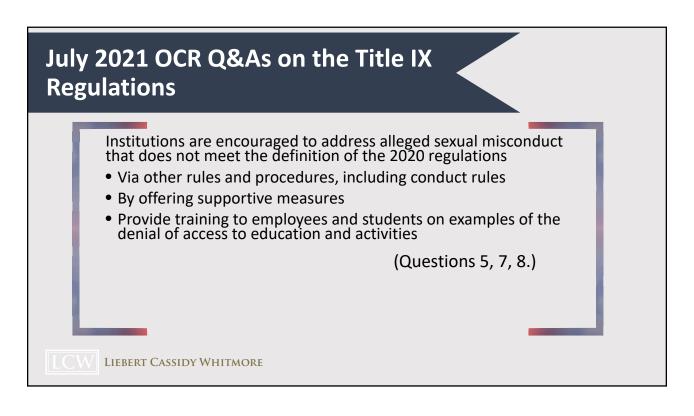


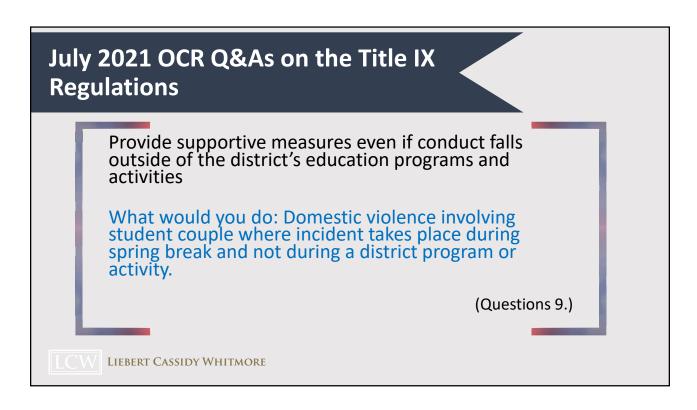


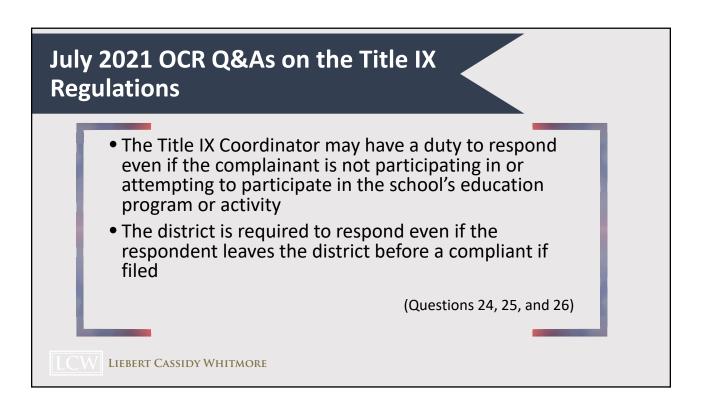


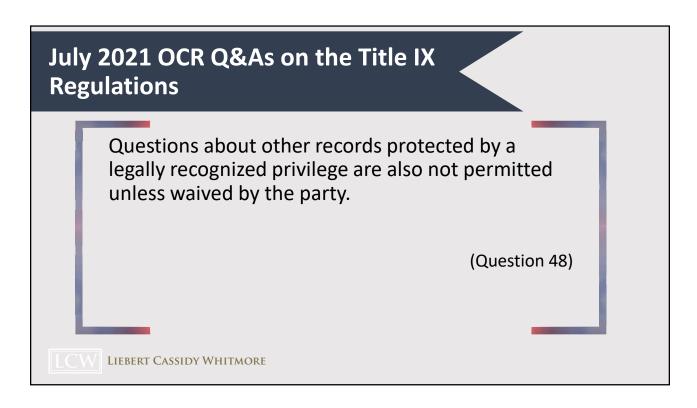




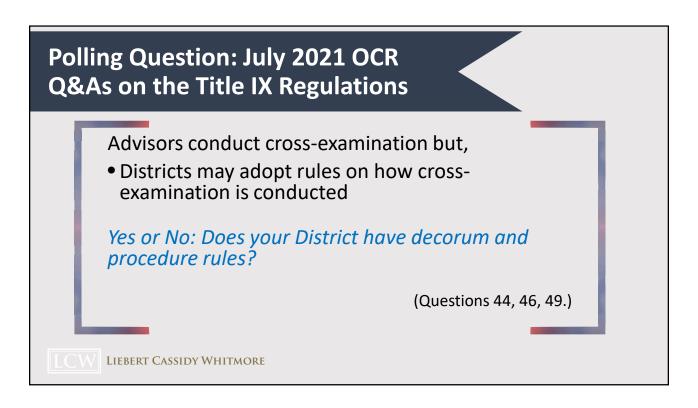


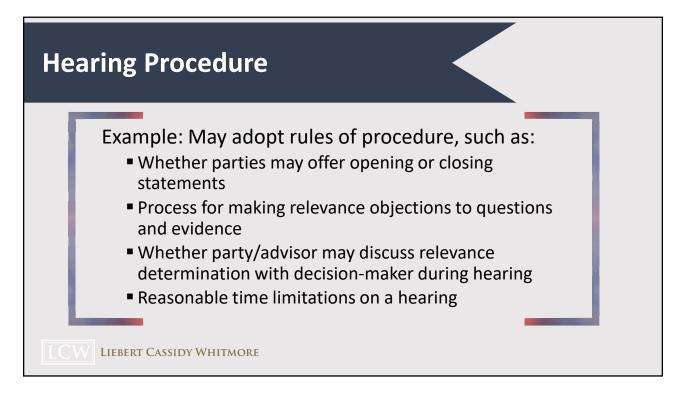


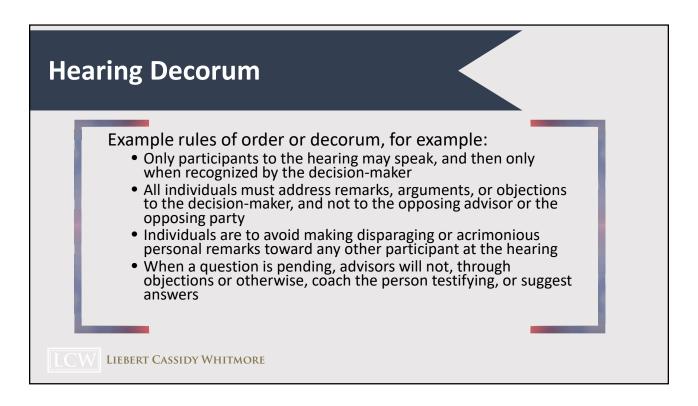


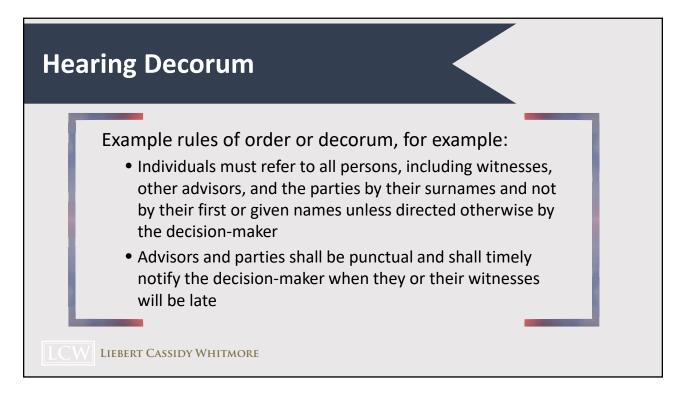


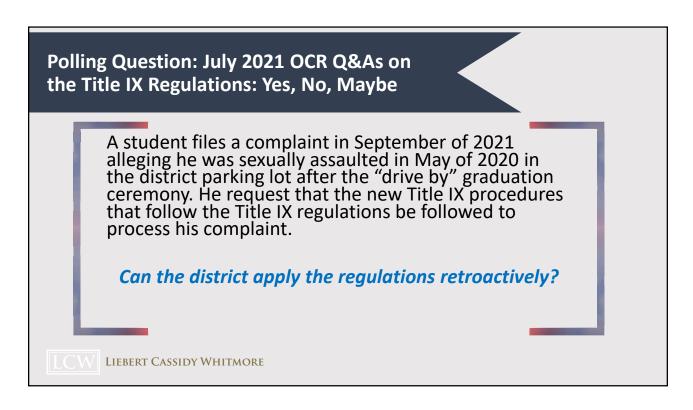


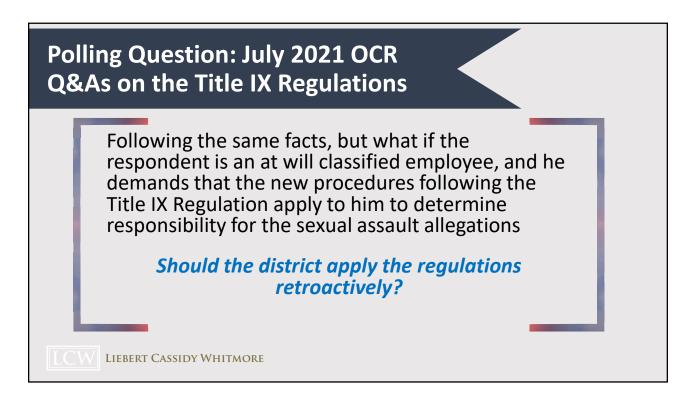












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Retroactivity

- RPI concluded respondent violated its Title IX Policy
- On August 11, 2020, the respondent requested a hearing and application of RPI's new Policy
- RPI refused to apply its new policy
- Court granted preliminary injunction requiring RPI to use the new policy for conduct occurring before August 14, 2020
 - Doe v. Rensselaer Polytechnic Institute 2020 WL 6118492 (N.D.N.Y. Oct. 16, 2020)



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Title IX Developments: Statements Not Subject to Cross-Examination

- August 24, 2021, OCR issued new guidance: will no longer enforce part of 34 C.F.R. § 106.45(b)(6)(i) that prohibits decision-makers from considering statements not subject to cross-examination
- Follows July 28, 2021 U.S. District Court for the district of Massachusetts' decision holding provision to be arbitrary and capricious
 - Court issued a second order clarifying that it had vacated and remanded the provision and that its ruling applied nationwide



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Institutions Can Rely on Statements Not Subject to Cross-Examination

CCD decision makers can now consider statements even if the parties or witnesses do not submit to crossexamination at the live hearing, including:

- Statements made by the parties and witnesses during the investigation
- Emails or text messages between the parties
- Statements in Sexual Assault Nurse Examiner (SANE) reports, police reports, medical reports and other documents



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Case Studies

- Statement by neighbor who will not testify that respondent was with him during the time of the alleged incident
- Statement in an text by a respondent who will not testify that she is sorry about hurting the complainant and not stopping even after complainant passed out from doing tequila shots



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Thank You!

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