An Introduction to Managing Title IX Sexual Harassment on Campus

Thompson Coburn LLP
Title IX Training Series | July 2020

Thompson Coburn LLP

- Full-service law firm with over 380 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, and Washington, D.C.
- Higher education practice provides legal counsel, compliance, and training services to colleges and universities.

Higher Education Practice

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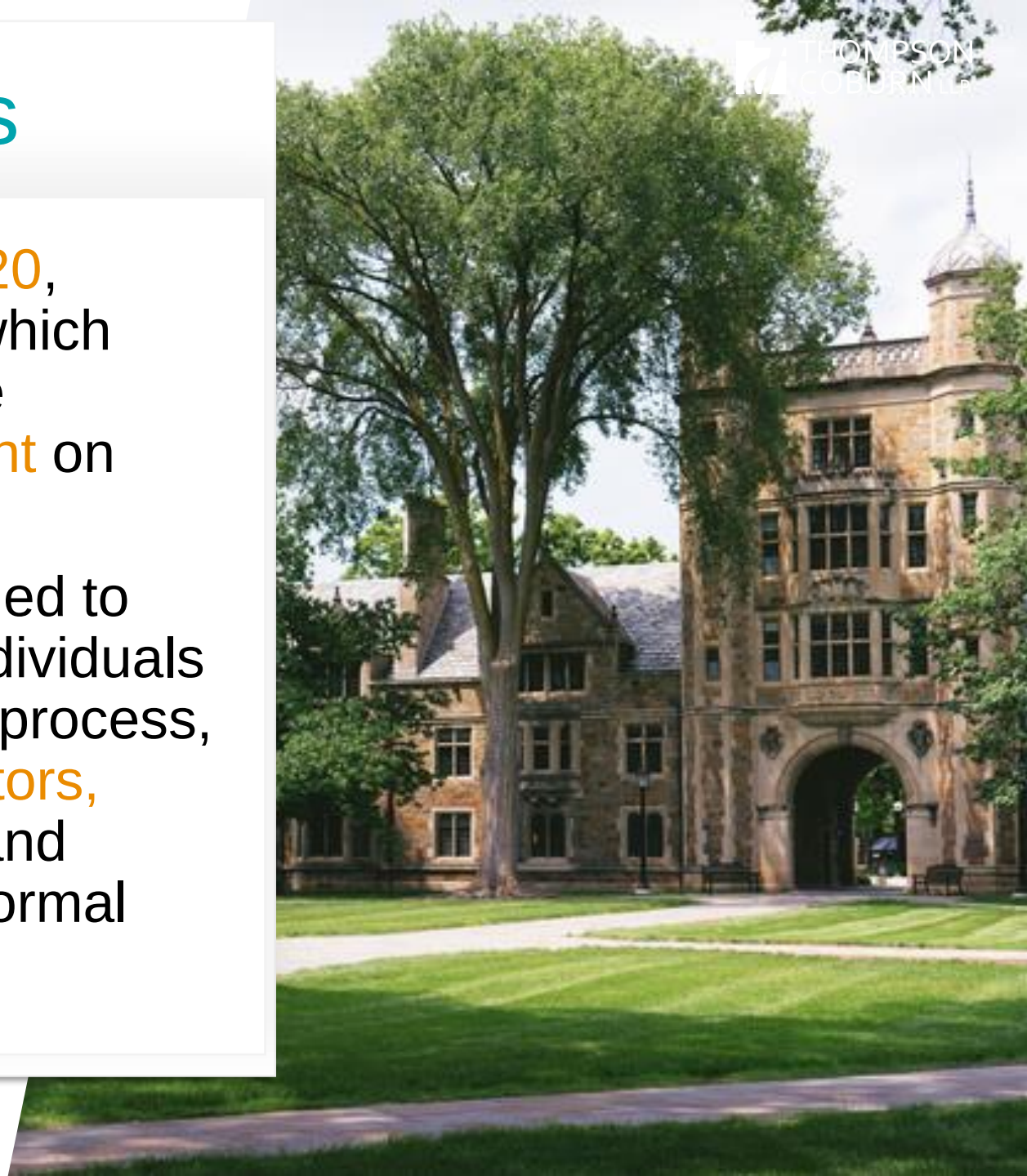
Purpose of Training Series

The Title IX rule effective August 14, 2020, creates a new and specific process by which postsecondary institutions must manage complaints of covered sexual harassment on campus.

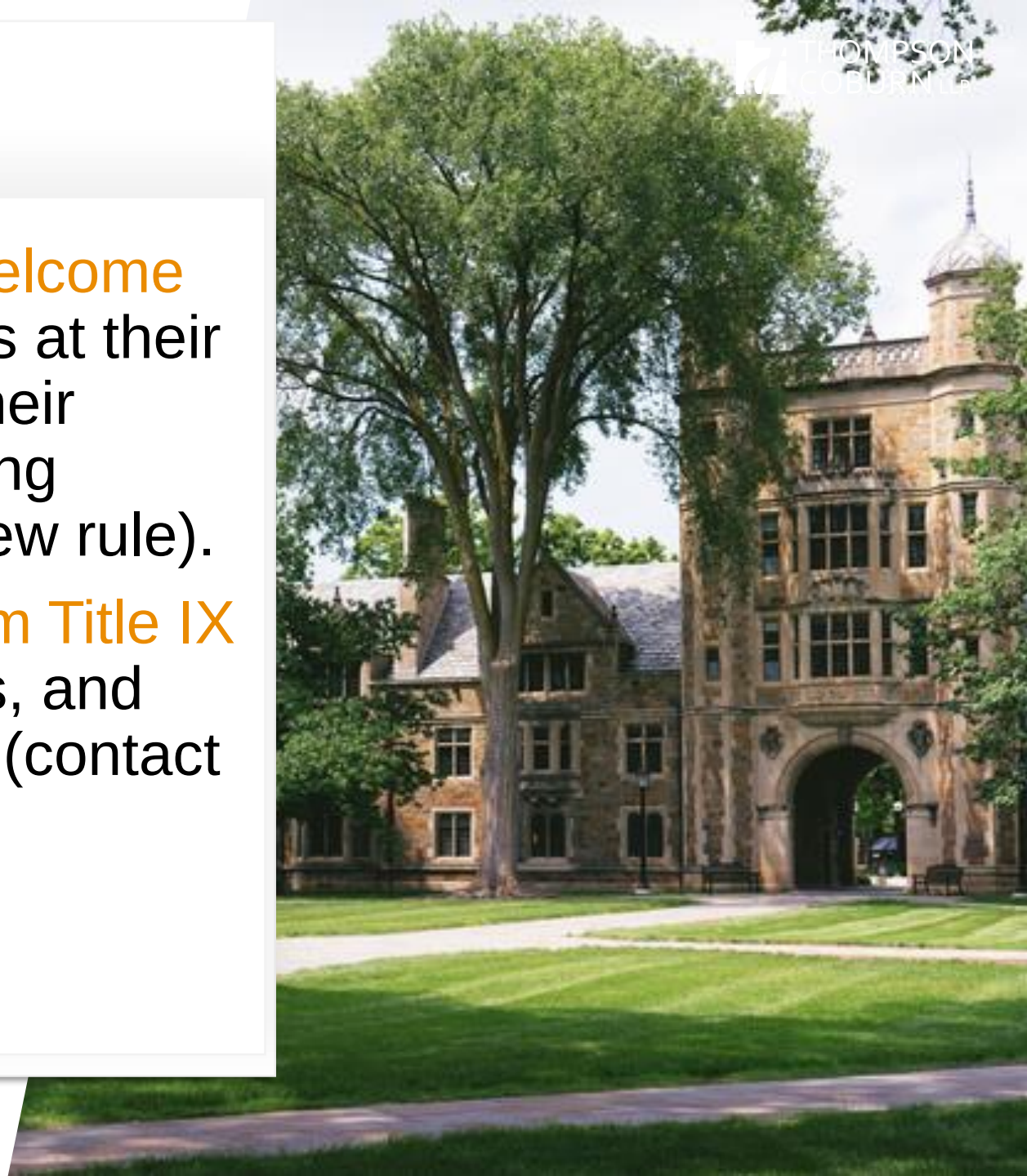
The TC Title IX Training Series is designed to provide foundational training to those individuals who will help to administer this required process, including Title IX coordinators, investigators, adjudicators, advisors, appeal officers, and individuals responsible for managing informal resolutions.



Use of Training Series

Institutions of higher education are welcome to use this foundational training series at their discretion, and to post the series to their websites as part of their Title IX training materials (a requirement under the new rule).

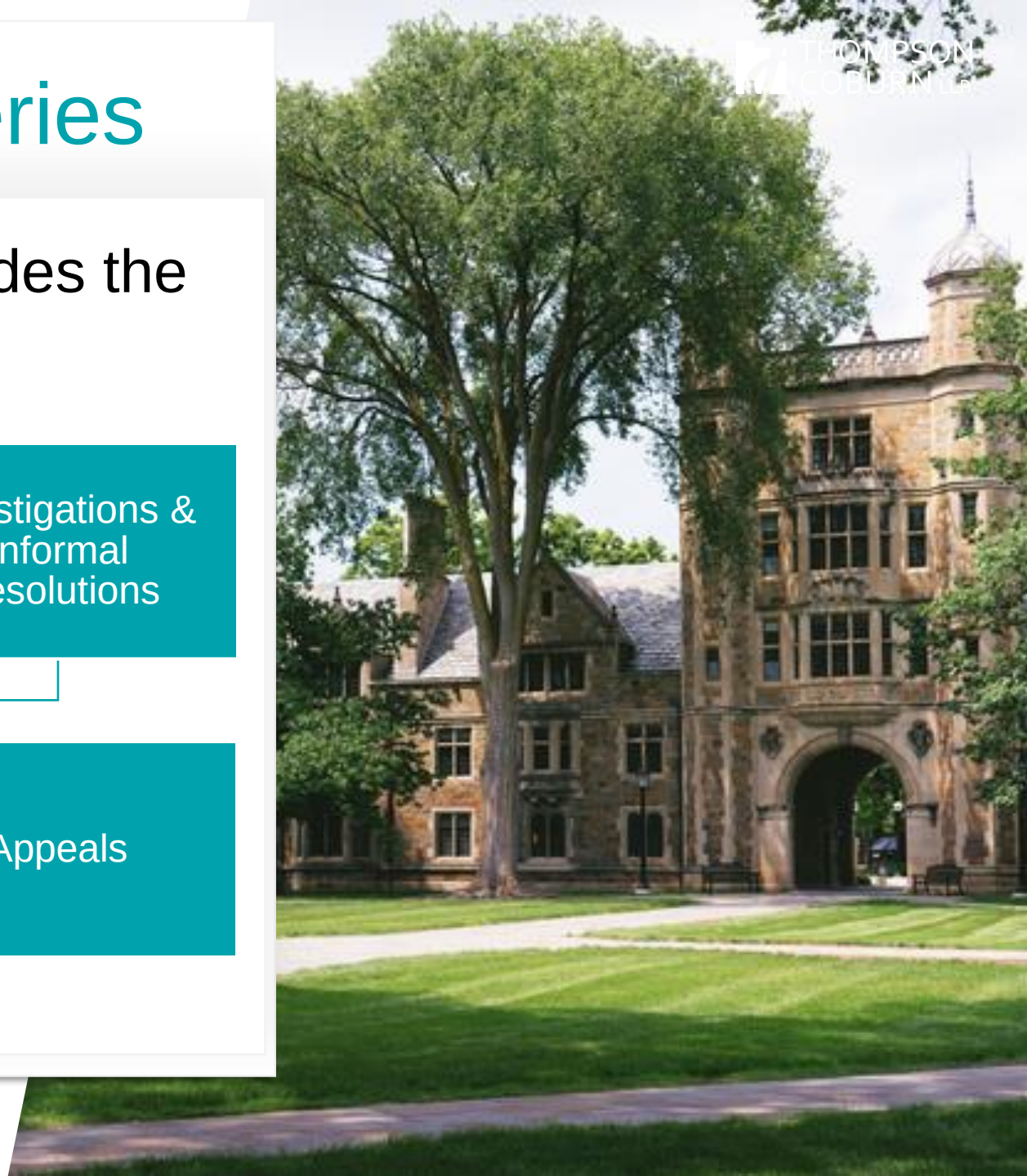
TC also is available to prepare custom Title IX training sessions, hearing simulations, and other assistance with Title IX matters (contact Aaron Lacey or Scott Goldschmidt).



Curriculum for Training Series

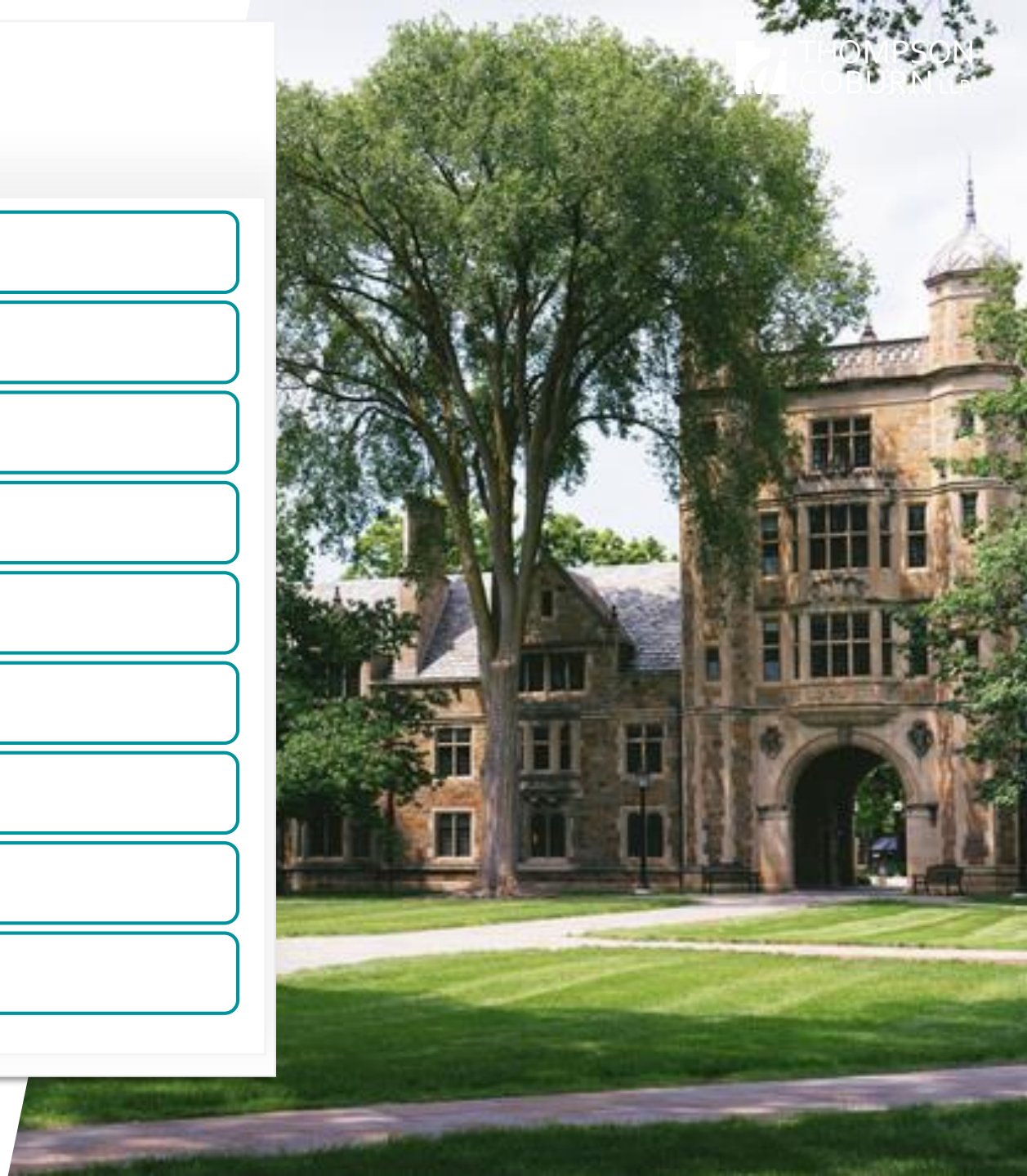
The foundational training series includes the following six sessions:

- Introduction to Managing Title IX Sexual Harassment
- Formal Complaints of Title IX Sexual Harassment
- Investigations & Informal Resolutions
- Hearings
- Determinations
- Appeals



Syllabus for this Session

- Title IX Fundamentals
- The New Rule & Sexual Harassment
- Key Definitions
- Responding to Title IX Sexual Harassment
- Elements of a Sufficient Response
- Interim & Supportive Measures
- Formal Complaints of Title IX Sexual Harassment
- Recordkeeping
- Additional Considerations



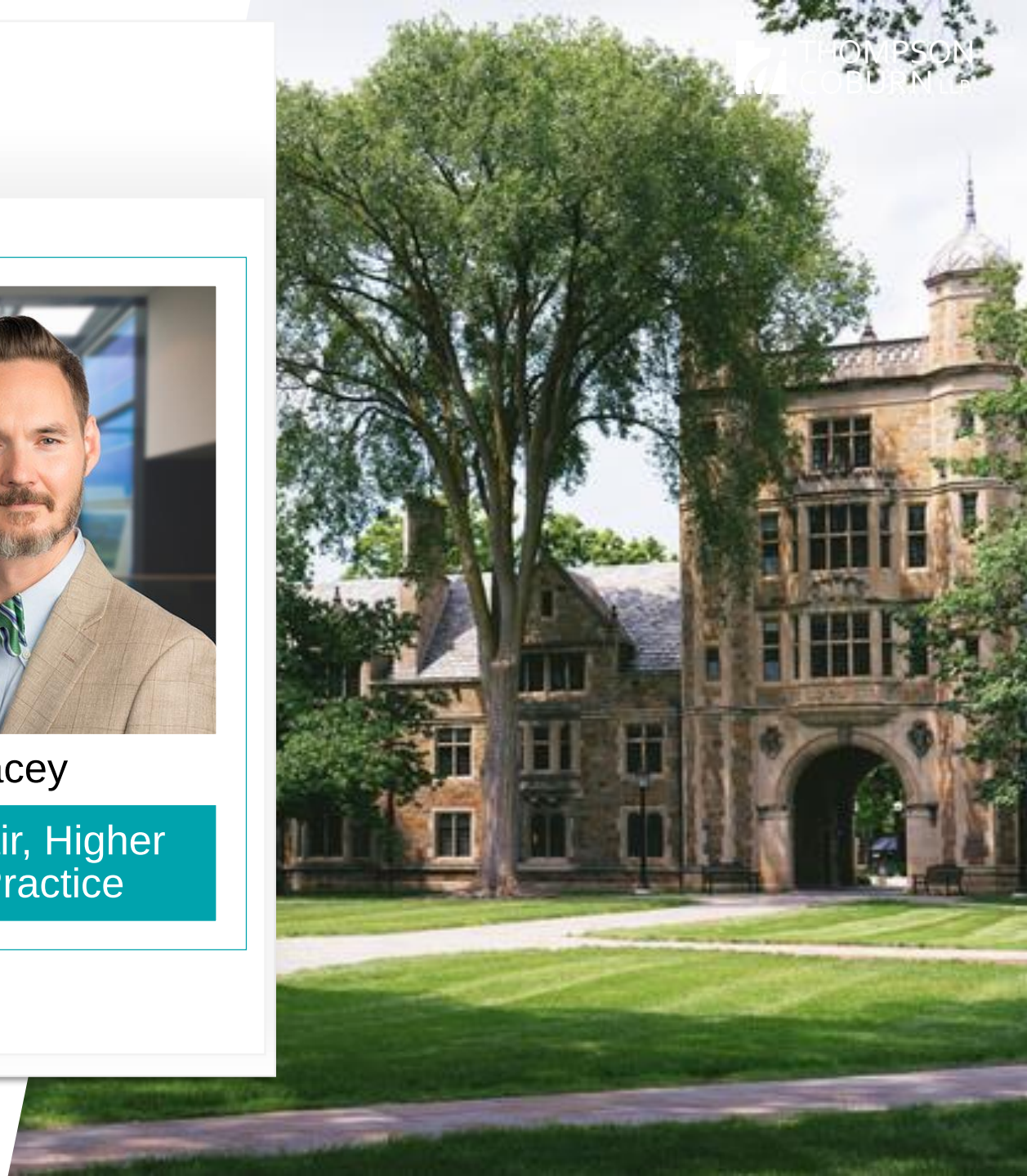
Session Presenters

Scott Goldschmidt

Counsel, Higher Education Practice

Aaron Lacey

Partner & Chair, Higher Education Practice



Title IX Fundamentals

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The Title IX Statute

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities and employment.

- Covers not only equity in athletic programming, but all forms of discrimination based on sex.
- Protects students and employees.
- Applies to all institutions that receive federal financial assistance, either directly or indirectly.
- Enforced by the Office of Civil Rights.

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20 U.S.C. §1681 *et seq.*

Sex-Based Discrimination

What is sex-based discrimination?

- The term is not defined in Title IX.
- "The Department follows the Supreme Court's approach in interpreting conduct "on the basis of sex" to include conduct of a sexual nature or conduct referencing or aimed at a particular sex."
- Includes sexual harassment (e.g., unwelcome sexual advances, requests for sexual favors), and sexual violence, which is a subset of sexual harassment (e.g., dating violence, domestic violence, sexual assault, or stalking)

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85 Fed. Reg. 30146-7 (May 19, 2020).

The Title IX Regulations

Amplify the statute considerably, requiring institutions to:

- Disseminate a policy which includes a non-discrimination statement.
- Designate a Title IX Coordinator.
- Adopt and publish grievance procedures that are prompt and equitable and allow for adequate, reliable, and impartial investigation of complaints.
- Take action to address and prevent sex-based discrimination.

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34 CFR 106.8.

The Title IX Regulations

With regard to students, specifically prohibit discrimination in:

Admission and recruitment	Education programs or activities	Housing
Facilities	Counseling	Financial and employment assistance
Health insurance and benefits	Marital or parental status	Athletics

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34 CFR Part 106.

The Title IX Regulations

With regard to employment, specifically prohibit discrimination in:

Employment	Recruitment	Compensation
Job classification	Fringe benefits	Marital or parental status
Advertising	Pre-employment inquiries	Employment criteria

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34 CFR Part 106.

The New Rule & Sexual Harassment

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Title IX Timeline

Date	Event
June 23, 1972	Title IX of the Education Amendments of 1972
July 21, 1975	ED publishes 34 CFR Part 106, which implements Title IX.
March 13, 1997	ED publishes Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.
June 22, 1998	Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274 (1998) (holding that an individual may only recover monetary damages under Title IX when a school official with authority to institute corrective measures has actual notice of the harassment but is deliberately indifferent to it).
May 24, 1999	Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629 (1999) (holding that a school can be liable under Title IX for student-on-student sexual harassment, but only if the school is deliberately indifferent to known sexual harassment, the respondent is under the school's disciplinary authority, and the behavior is so severe, pervasive, and objectively offensive that it denies access to the school's program and activities).

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Title IX Timeline

Date	Event
Jan. 2001	Following significant judicial activity, ED publishes Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties. ED draws distinction between standards for administrative enforcement and standards for private litigation.
Nov. 13, 2000	ED updates Title IX rules to incorporate the Civil Rights Restoration Act's broadened definitions of "program or activity" and "program."
Oct. 25, 2006	ED updates Title IX rules to clarify and modify requirements regarding single-sex schools, classes, and extracurricular activities in elementary and secondary schools.
April 2011	ED publishes DCL with extensive guidance concerning school responsibilities for preventing and addressing sexual harassment and sexual violence.
April 2014	ED publishes Questions and Answers on Title IX and Sexual Violence, further clarifying guidance articulated in 2001 Guidance and 2011 DCL.
May 2016	ED and DOJ issue joint DCL regarding treatment of transgender students, accompanied by Examples of Policies and Emerging Practices for Supporting Transgender Students.

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Title IX Timeline

Date	Event
Feb. 2017	ED publishes DCL rescinding May 2016 DCL regarding treatment of transgender students.
Sept. 2017	ED publishes DCL rescinding April 2011 DCL as well 2014 Q&A on Campus Sexual Misconduct.
Nov. 2018	On November 29, 2018, ED publishes the official version of its proposed Title IX rule in the Federal Register. The first significant rule concerning sexual misconduct since 1975.
May 2020	On May 19, 2020, ED publishes the official version of its final Title IX rule in the Federal Register.
August 14, 2020	Effective Date of new Title IX Rule.

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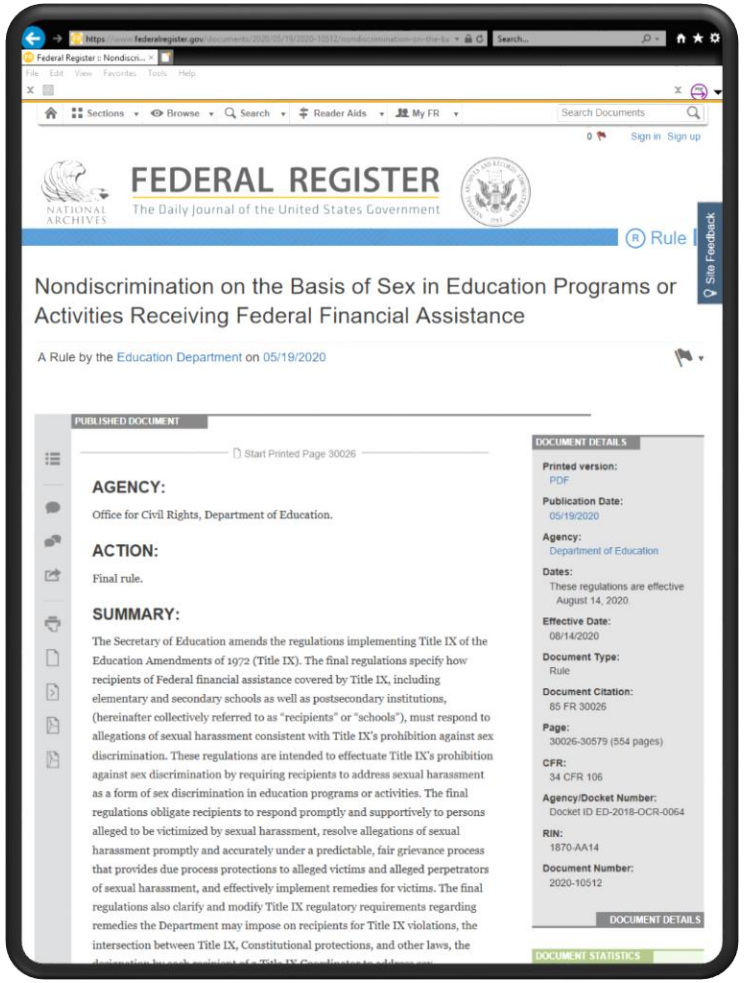
The New Title IX Rule

Controversial, and already challenged, ED's new rule is its first regulation addressing sexual harassment since 1975.

The new rule articulates a complex framework for managing allegations of sexual harassment on campus.



FEDERAL REGISTER

The Daily Journal of the United States Government

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

A Rule by the Education Department on 05/19/2020

PUBLISHED DOCUMENT

Start Printed Page 30026

AGENCY:

Office for Civil Rights, Department of Education.

ACTION:

Final rule.

SUMMARY:

The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as "recipients" or "schools"), must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. These regulations are intended to effectuate Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities. The final regulations obligate recipients to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims. The final regulations also clarify and modify Title IX regulatory requirements regarding remedies the Department may impose on recipients for Title IX violations, the intersection between Title IX, Constitutional protections, and other laws, the

DOCUMENT DETAILS

Printed version: PDF

Publication Date: 05/19/2020

Agency: Department of Education

Dates: These regulations are effective August 14, 2020.

Effective Date: 08/14/2020

Document Type: Rule

Document Citation: 85 FR 30026

Page: 30026-30579 (554 pages)

CFR: 34 CFR 106

Agency/Docket Number: Docket ID ED-2018-OCR-0064

RIN: 1870-AA14

Document Number: 2020-10512

DOCUMENT STATISTICS

- Title IX Fundamentals
- The New Rule & Sexual Harassment
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The Big Picture

Discrimination Based on Sex: Institutions are obligated to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any form of prohibited sex discrimination occurring against a person in the United States. 34 CFR 106.8(c)-(d).

Title IX Sexual Harassment: With or without a formal complaint, institutions with actual knowledge of Title IX sexual harassment occurring in an education program or activity of the school against a person in the United States must respond promptly in a manner that is not deliberately indifferent and complies with 34 CFR 106.44(a).

Formal Complaint of Title IX Sexual Harassment: In response to a formal complaint of sexual harassment, institutions must follow a Title IX formal complaint process that complies with the new standards set forth in 34 CFR 106.45.

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Key Definitions

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New Definitions of Key Terms

- Sexual Harassment
- Complainant
- Respondent
- Consent
- Actual Knowledge
- Supportive Measures
- Formal Complaint

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34 CFR 106.30(a) (August 14, 2020).

Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 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 school's education program or activity;
- an employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct; or
- sexual assault, as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in VAWA.

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34 CFR 106.30(a) (August 14, 2020).

Sexual Harassment

What is the basis for the new definition of sexual harassment?

- From one administration to the next, the Department has consistently maintained that the standards the agency uses to determine Title IX compliance do not need to align with those established by the Supreme Court in *Gebser* and *Davis*.
- Without surrendering this discretion, this Department has chosen "to build these final regulations upon the foundation established by the Supreme Court…"
- This Department "believes it would be beneficial for recipients and students alike if the administrative standards governing recipients' responses to sexual harassment were aligned with the standards developed by the Supreme Court in private actions…"

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85 Fed. Reg. 30210 (May 19, 2020).

Sexual Harassment

Does this definition prohibit all harassing or offensive remarks?

- No. Unwelcome conduct must be severe, pervasive, and objectively offensive. But schools can still address such remarks in a variety of ways.

Does quid pro quo harassment need to be severe, pervasive, and objectively offensive? How about Clery/VAWA offenses?

- No. Only the “unwelcome conduct” prong of the sexual harassment definition must be severe, pervasive, and objectively offensive. A victim of quid pro quo sexual harassment or Clery/VAWA sex offenses, has been effectively denied equal access to education.

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Complainant, Respondent, Consent

Complainant. An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Consent. The Assistant Secretary will not require schools to adopt a particular definition of consent with respect to sexual assault.

- Some schools are under state law requirements to apply a particular definition of consent for purposes of campus sexual misconduct policies.

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34 CFR 106.30(a) (August 14, 2020).

Responding to Title IX Sexual Harassment

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Responding to Title IX Sexual Harassment

An institution must respond to sexual harassment, with or without a formal complaint, when:

- the school has actual knowledge of the alleged sexual harassment;
- the alleged sexual harassment occurred in an education program or activity of the school; and
- the alleged sexual harassment was against a person physically located in the United States.

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34 CFR 106.44(a) (August 14, 2020).

Actual Knowledge

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the institution.

- The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the institution.

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34 CFR 106.30(a) (August 14, 2020).

Actual Knowledge

Who can make a report?

- Any person (including bystanders or anonymous reports).

Who is an official with authority to institute corrective measures on behalf of the institution?

- This is a fact-specific determination. Per the Preamble, possibly supervisors and deans. Schools can identify such individuals in a list.

Which employees must report sexual harassment to the Title IX Coordinator?

- As to employees who are not the Title IX Coordinator or Officials with Authority, schools have wide discretion to craft and implement their own employee reporting policy.

Program or Activity

An education program or activity of the school includes "locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution."

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34 CFR 106.44(a) (August 14, 2020).

Program or Activity

How does an institution determine what constitutes a program or activity?

- "It's a fact specific inquiry. The key questions are whether the recipient exercised substantial control over the respondent and the context in which the incident occurred."

What if a student is sexually assaulted outside of an education program or activity but later suffers Title IX sexual harassment in an education program or activity?

- Title IX would only cover the act of sexual harassment in an institution's education program or activity, but the institution may still choose address the prior assault through its own process or code of conduct.

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85 Fed. Reg. 30204 (May 19, 2020).

Physical Location

The complainant must be a person physically located in the United States.

- The Department acknowledges that individuals experiencing sexual harassment while outside of the country (*i.e.*, studying abroad) would not be covered.
- However, it would appear that sexual harassment perpetrated online against an individual physically located in the United States could be covered, even if the perpetrator were located outside of the country.

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34 CFR 106.44(a) (August 14, 2020).

Elements of a Sufficient Response

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Elements of a Sufficient Response

Institutions must respond "promptly" and "in a manner that is not deliberately indifferent."

A school is deliberately indifferent "only if its response to sexual harassment is clearly unreasonable in light of the known circumstances."

In the proposed rule, the Department offered additional detail regarding conduct that would, or would not, constitute deliberate indifference. The final rule does not include this language.

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34 CFR 106.44(a) (August 14, 2020).

Elements of a Sufficient Response

However, the final rule does specify that a Title IX Coordinator must promptly contact the complainant to:

- discuss the availability of supportive measures;
- consider the complainant's wishes with respect to supportive measures;
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- explain to the complainant the process for filing a formal complaint.

A failure to satisfy these specific requirements could be characterized as deliberate indifference.

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34 CFR 106.44(a) (August 14, 2020).

Elements of a Sufficient Response

Further, the final rule specifies that a school's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a compliant grievance process before the imposition of any disciplinary sanctions against a respondent.

Once again, a failure to satisfy these requirements could be deemed deliberate indifference.

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34 CFR 106.44(a) (August 14, 2020).

Elements of a Sufficient Response

Does the deliberate indifference standard relieve recipients of their obligation to respond to every known allegation of sexual harassment?

- No.

In the absence of a formal complaint, are there circumstances where an institution would initiate a grievance process against the respondent to avoid being deliberately indifferent?

- Yes. The Title IX Coordinator may sign a formal complaint to initiate a grievance process. Examples noted in the Preamble are threat, serial predation, violence, or weapons.

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85 Fed. Reg. 30218 (May 19, 2020).

Interim & Supportive Measures

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Interim Measures: Removal / Leave

An institution would be permitted to remove a respondent from campus on an emergency basis, provided:

- that the school undertakes an individualized safety and risk analysis;
- determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
- provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

An institution also would be permitted to place a "non-student employee respondent" on administrative leave during the "pendency of [its] grievance process."

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34 CFR 106.44(c)-(d) (August 14, 2020).

Interim Measures: Removal / Leave

What does the "individualized safety or risk analysis" require?

- "…more than a generalized, hypothetical, or speculative belief that the respondent may pose a risk to someone's physical health or safety."

What does it mean that an individual can challenge their removal "immediately" after removal?

- This is fact-specific, but is generally understood as occurring without delay, as soon as possible, given the circumstances.

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85 Fed. Reg. 30233 (May 19, 2020).

Interim Measures: Removal / Leave

Is self-harm grounds for emergency removal?

- Yes, when the threat arises from allegations of sexual harassment. But it is important for institution's to consider and comply with the ADA.

Do respondents who are employees receive the same due process protections with respect to emergency removals (i.e., post-removal notice and opportunity to challenge the removal)?

- Yes.

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Supportive Measures

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Such measures are designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school's educational environment, or deter sexual harassment.

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34 CFR 106.30(a) (August 14, 2020).

Examples of Supportive Measures

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work locations
- Changes in housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus

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34 CFR 106.30(a) (August 14, 2020).

Supportive Measures

The school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

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34 CFR 106.30(a) (August 14, 2020).

Formal Complaints of Title IX Sexual Harassment

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Formal Complaint

- A formal complaint of Title IX sexual harassment means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
- The phrase "document filed by a complainant" means a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

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34 CFR 106.30(a)-(b) (August 14, 2020).

Formal Complaint

- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail… and by any additional method designated by the school.
- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

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34 CFR 106.30(a) (August 14, 2020).

Formal Complaint Process

- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party, and must comply with applicable Title IX requirements.
- For the purpose of addressing formal complaints of sexual harassment, a school's formal complaint policy and process must comply with a wide range of specific requirements set out in the new rule, including those on the following slide.

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34 CFR 106.45(b) (August 14, 2020).

Formal Complaint Process

Core Requirements	• Details 10 core requirements of formal complaint process
Complaint Dismissal	• Grounds for dismissal and procedural requirements
Consolidation	• Complaint consolidation in specific circumstances
Notice of Allegations	• Requirements for initial and ongoing notice to parties
Investigations	• 7 required elements of formal investigation
Informal Resolutions	• Permits informal resolution where appropriate
Hearings	• Hearing requirements, including cross-x and advisors
Determinations	• Requirements for adjudicators and determinations
Appeals	• Grounds and procedures for appeals
Recordkeeping	• Record maintenance requirements for specified periods

Title IX Fundamentals
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Key Definitions
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34 CFR 106.45(b)(1)-(10) (August 14, 2020).

Recordkeeping

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Recordkeeping

For each formal complaint of Title IX sexual harassment, the institution must maintain records for 7 years that include:

- records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment;
- the basis for the school's conclusion that its response was not deliberately indifferent;
- documentation that the school took measures designed to restore or preserve equal access; and
- if the school did not provide supportive measures, the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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34 CFR 106.45(b)(10) (August 14, 2020).

Recordkeeping

If there was an adjudication, the records also must contain:

- any determination regarding responsibility;
- any audio or audiovisual recording or transcript;
- any disciplinary sanctions imposed on the respondent;
- any remedies provided to the complainant;
- any appeal and the result; and
- any informal resolution and the result.

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34 CFR 106.45(b)(10) (August 14, 2020).

Recordkeeping

Apart from any specific proceeding, institutions also must keep for 7 years, all materials used to train Title IX Coordinators, investigators, adjudicators, and any person who facilitates an informal resolution process.

Further, schools must make these training materials publicly available on their websites.

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34 CFR 106.45(b)(10) (August 14, 2020).

Additional Considerations

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Retaliation

The new rule specifically prohibits retaliation, providing that no school "or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part."

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34 CFR 106.71(a) (August 14, 2020).

Relationship to Title VII

Title VII of the Civil Rights Act of 1964 generally prohibits discrimination in the workplace, and has been interpreted by the Supreme Court to prohibit sexual harassment.

In the Preamble to the new rule, the Department observes that it "is aware that Title VII imposes different obligations with respect to sexual harassment, including a different definition, and recipients that are subject to both Title VII and Title IX will need to comply with both sets of obligations."

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85 Fed. Reg. 30440 (May 19, 2020).

Relationship to Title VII

This having been acknowledged, the Department concludes that "nothing in these final regulations precludes an employer from complying with Title VII. The Department recognizes that employers must fulfill both their obligations under Title VII and Title IX, and there is no inherent conflict between Title VII and Title IX."

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85 Fed. Reg. 30440 (May 19, 2020).

Resources

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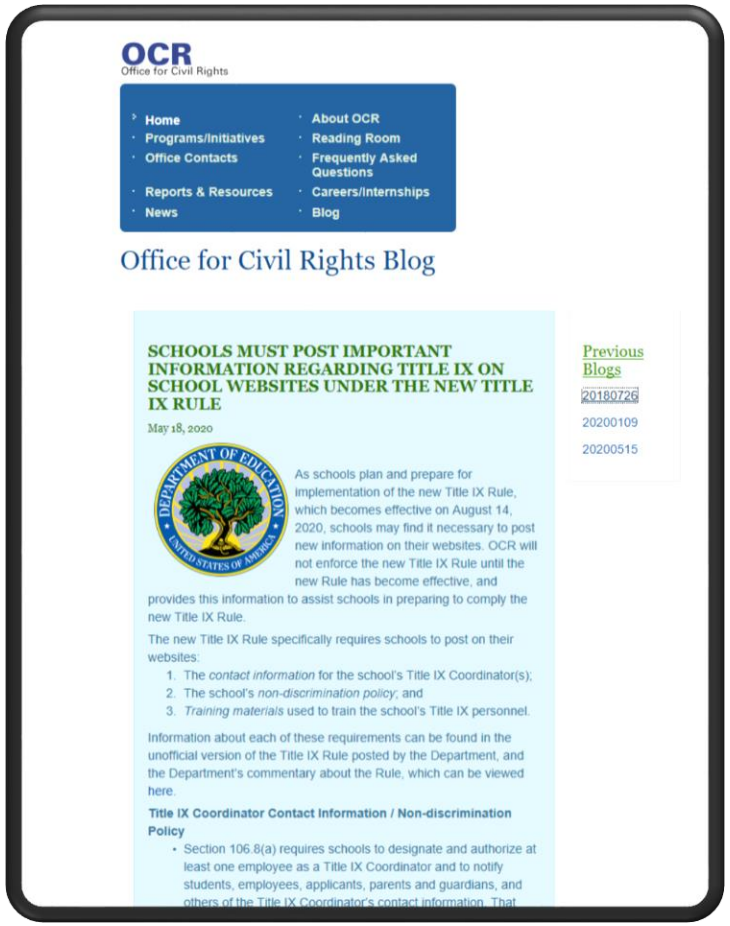
Office of Civil Rights

OCR Title IX Blog

- Will include new guidance on a rolling basis.

OCR Email Address

- OPEN@ed.gov
- May be used for submitting inquiries regarding the new Title IX rule.



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Office for Civil Rights

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Office for Civil Rights Blog

SCHOOLS MUST POST IMPORTANT INFORMATION REGARDING TITLE IX ON SCHOOL WEBSITES UNDER THE NEW TITLE IX RULE

May 18, 2020

As schools plan and prepare for implementation of the new Title IX Rule, which becomes effective on August 14, 2020, schools may find it necessary to post new information on their websites. OCR will not enforce the new Title IX Rule until the new Rule has become effective, and provides this information to assist schools in preparing to comply the new Title IX Rule.

The new Title IX Rule specifically requires schools to post on their websites:

1. The *contact information* for the school's Title IX Coordinator(s);
2. The school's *non-discrimination policy*; and
3. *Training materials* used to train the school's Title IX personnel.

Information about each of these requirements can be found in the unofficial version of the Title IX Rule posted by the Department, and the Department's commentary about the Rule, which can be viewed here.

Title IX Coordinator Contact Information / Non-discrimination Policy

- Section 106.8(a) requires schools to designate and authorize at least one employee as a Title IX Coordinator and to notify students, employees, applicants, parents and guardians, and others of the Title IX Coordinator's contact information. That

Previous Blogs
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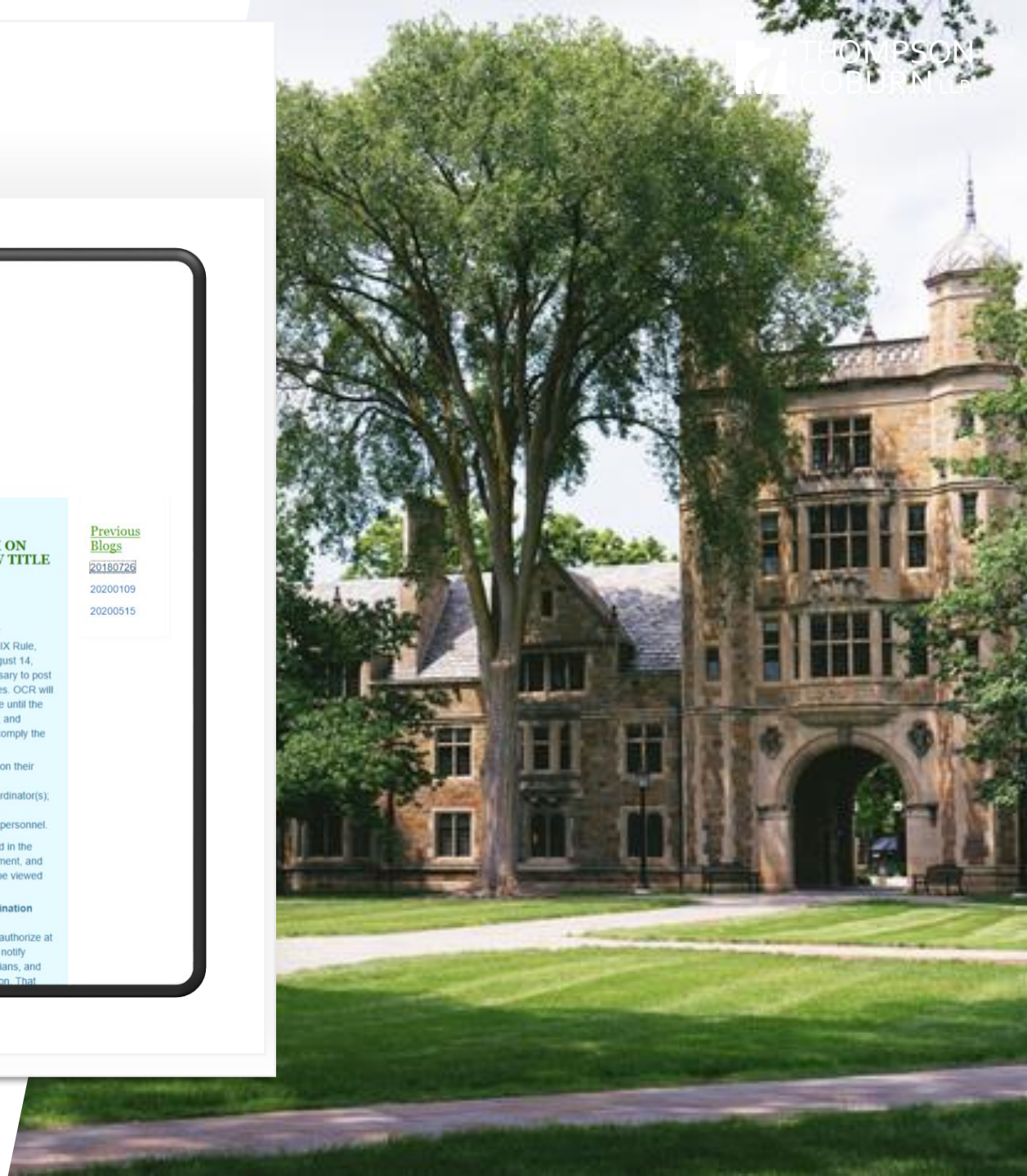
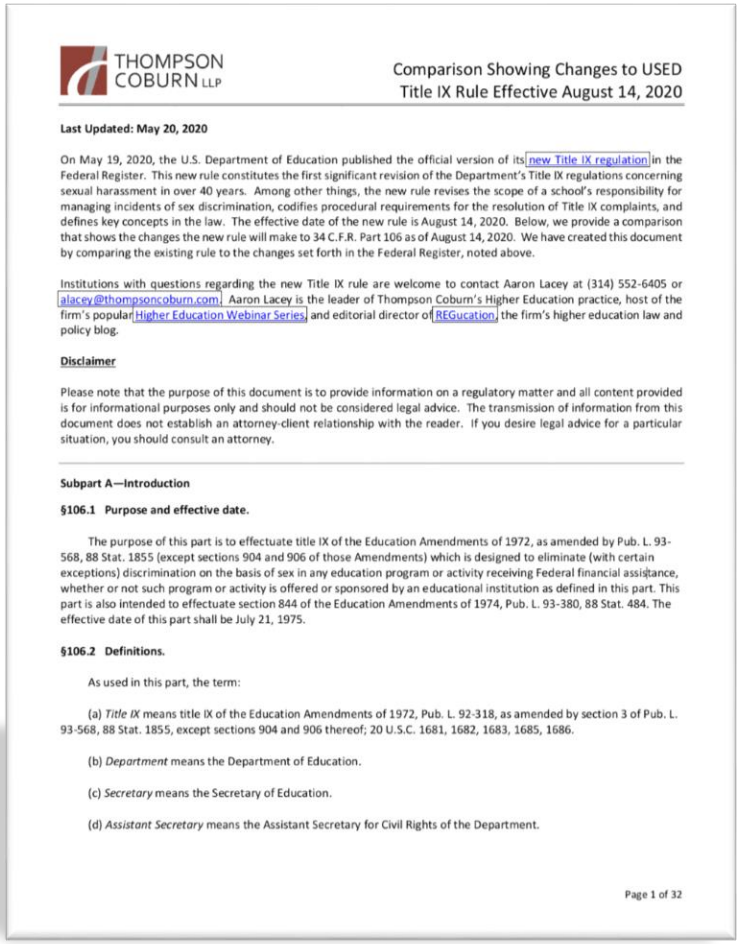


Title IX Rule Comparison

Title IX Rule Comparison

- Shows the changes the new rule will make to 34 C.F.R. Part 106 as of August 14, 2020.



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Comparison Showing Changes to USED Title IX Rule Effective August 14, 2020

Last Updated: May 20, 2020

On May 19, 2020, the U.S. Department of Education published the official version of its new Title IX regulation in the Federal Register. This new rule constitutes the first significant revision of the Department's Title IX regulations concerning sexual harassment in over 40 years. Among other things, the new rule revises the scope of a school's responsibility for managing incidents of sex discrimination, codifies procedural requirements for the resolution of Title IX complaints, and defines key concepts in the law. The effective date of the new rule is August 14, 2020. Below, we provide a comparison that shows the changes the new rule will make to 34 C.F.R. Part 106 as of August 14, 2020. We have created this document by comparing the existing rule to the changes set forth in the Federal Register, noted above.

Institutions with questions regarding the new Title IX rule are welcome to contact Aaron Lacey at (314) 552-6405 or alacey@thompsoncoburn.com. Aaron Lacey is the leader of Thompson Coburn's Higher Education practice, host of the firm's popular Higher Education Webinar Series, and editorial director of REGucation, the firm's higher education law and policy blog.

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Please note that the purpose of this document is to provide information on a regulatory matter and all content provided is for informational purposes only and should not be considered legal advice. The transmission of information from this document does not establish an attorney-client relationship with the reader. If you desire legal advice for a particular situation, you should consult an attorney.

Subpart A—Introduction

§106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

§106.2 Definitions.

As used in this part, the term:

(a) *Title IX* means title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *Department* means the Department of Education.

(c) *Secretary* means the Secretary of Education.

(d) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department.

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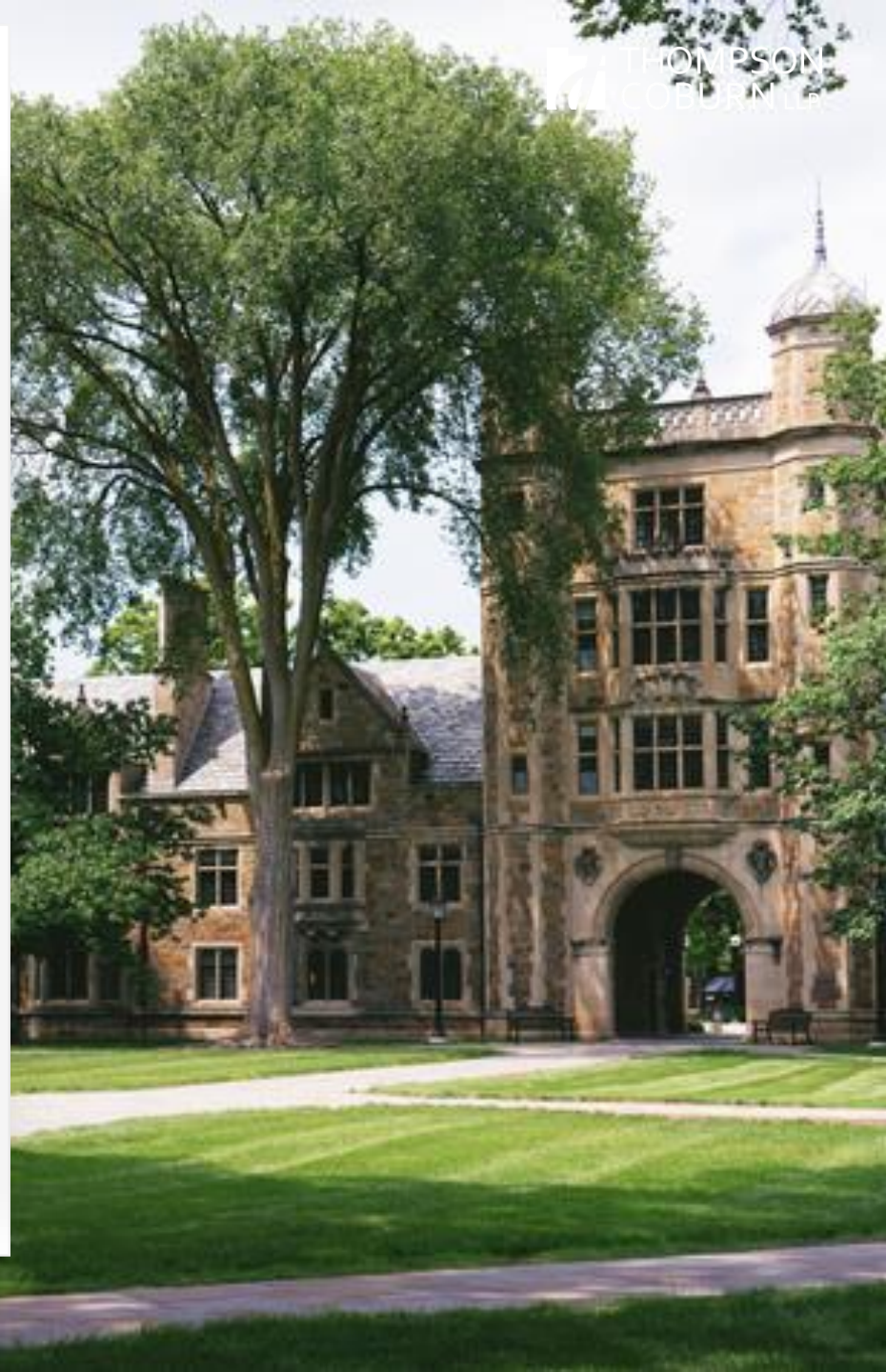
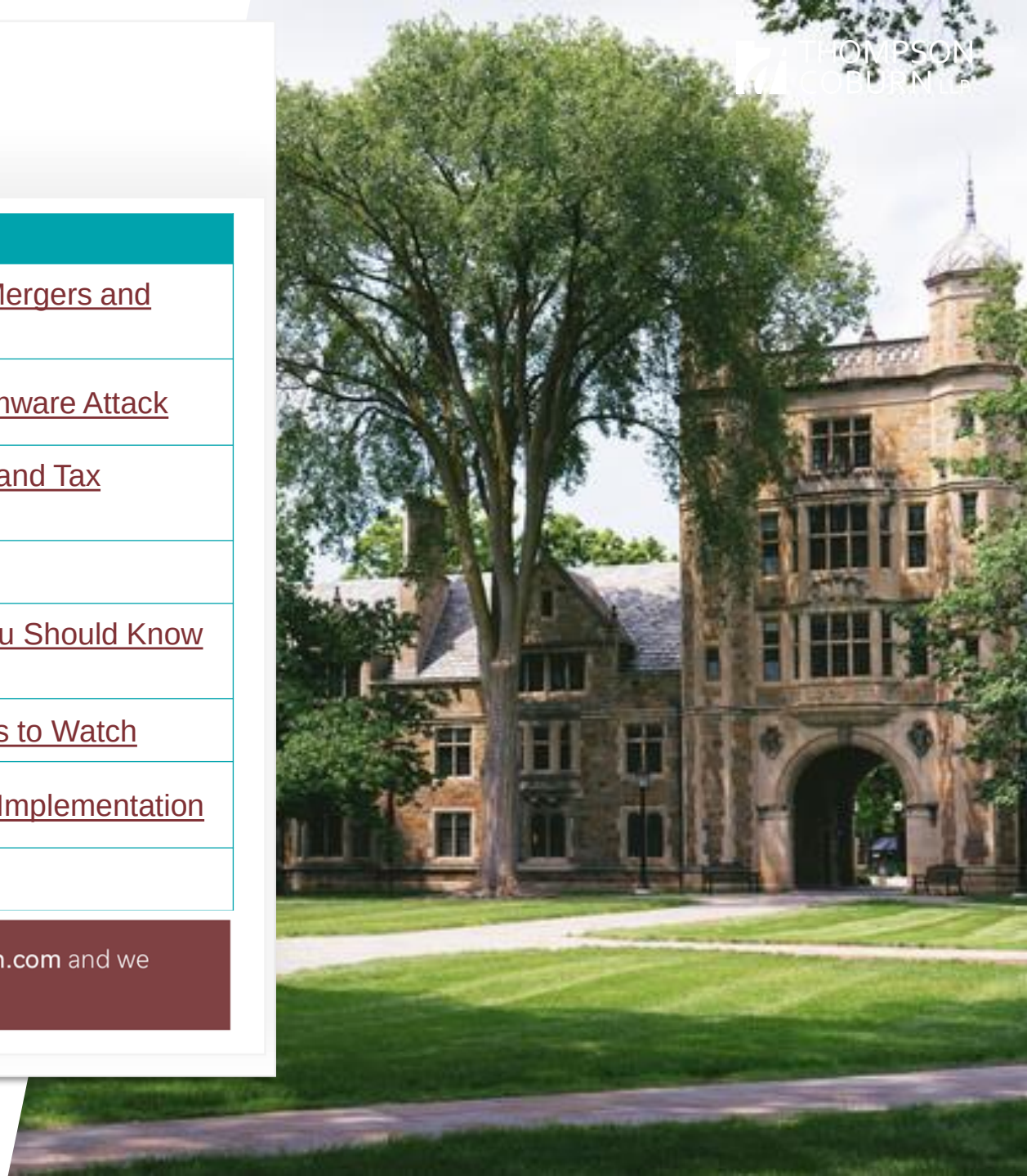


Higher Ed Webinar Series

2019 | 2020 Series Calendar	
August 2019	Examining the ED Approval Process for Higher Ed Mergers and Acquisitions
September 2019	Colleges Held for Ransom: Responding to a Ransomware Attack
October 2019	Merging Institutions of Higher Education: Corporate and Tax Considerations
December 2019	A Year-End Roundup of ED Rulemaking Activity
February 2020	Recent Court Decisions in Student Disputes That You Should Know About
March 2020	Higher Education & Immigration: Five Evolving Areas to Watch
April 2020	The CARES Act for Higher Education: Strategy and Implementation
May 2020	ED's New Title IX Rule: A Detailed Examination

If you would like to register for our webinars, email **srichter@thompsoncoburn.com** and we will send you a link as we open each webinar for registration.



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Webinars on Demand

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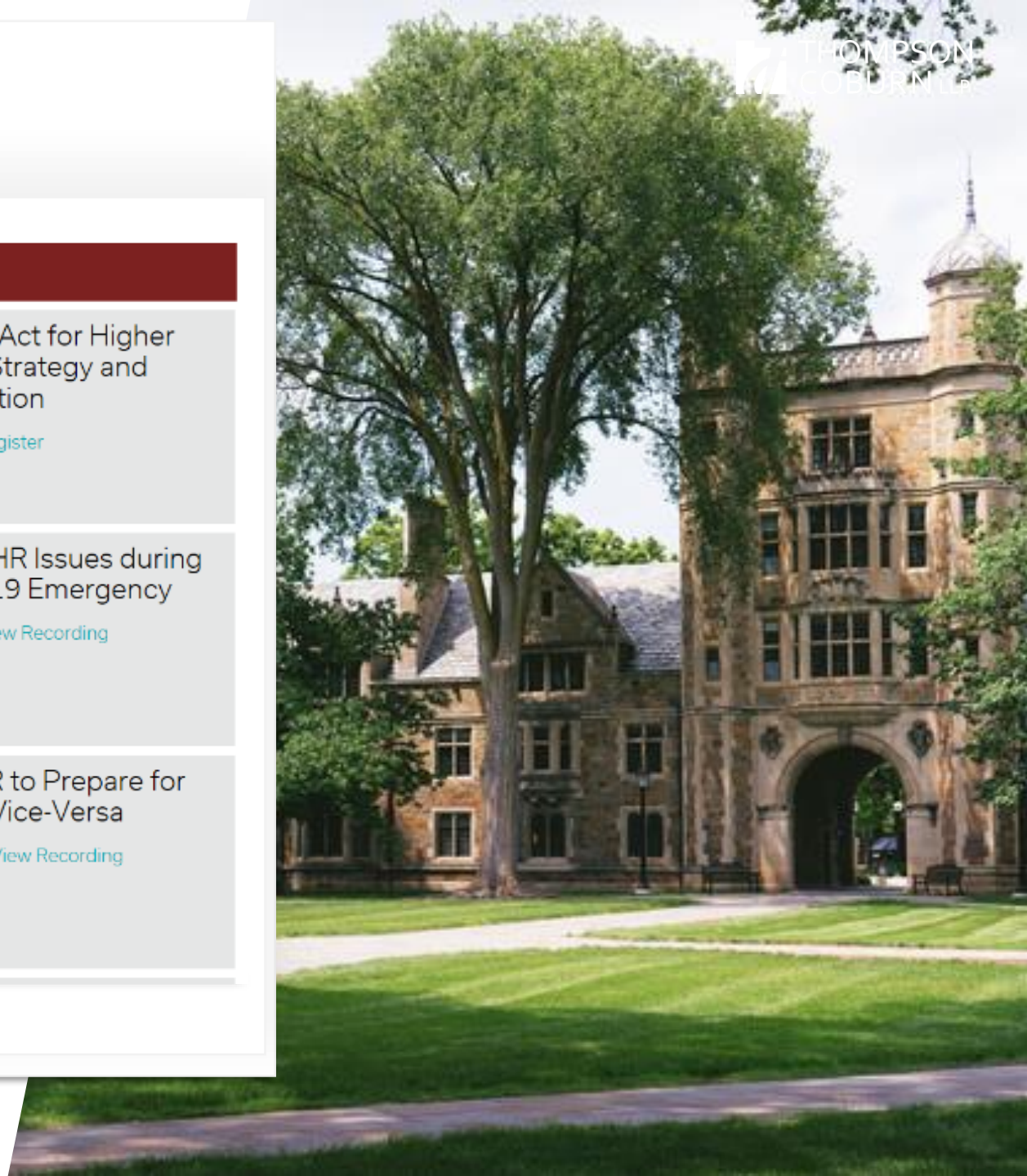
Overview of Loss Limitations; Family Office Partnership; Sale to Spousal Grantor Trust April 28, 2020 | Register	Better Together? Competition, Price Gouging and Other Antitrust Issues Raised by the COVID-19 Pandemic April 21, 2020 | Register	The CARES Act for Higher Education: Strategy and Implementation April 20, 2020 | Register
Law and Order in the Time of COVID-19: Does EPA's Temporary Enforcement Policy Apply to Me? April 17, 2020	State and Federal Implementation of Industrial Hemp Laws April 16, 2020 | View Recording	Navigating HR Issues during the COVID-19 Emergency April 16, 2020 | View Recording
Contingency Planning for Distressed Institutions of Higher Education April 8, 2020 | View Recording	Higher Education & Immigration: Five Evolving Areas to Watch March 12, 2020 | View Recording	Using GDPR to Prepare for CCPA, and Vice-Versa March 11, 2020 | View Recording



REGucation (our blog)

REGUCATION

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The CARES Act: More options for higher education

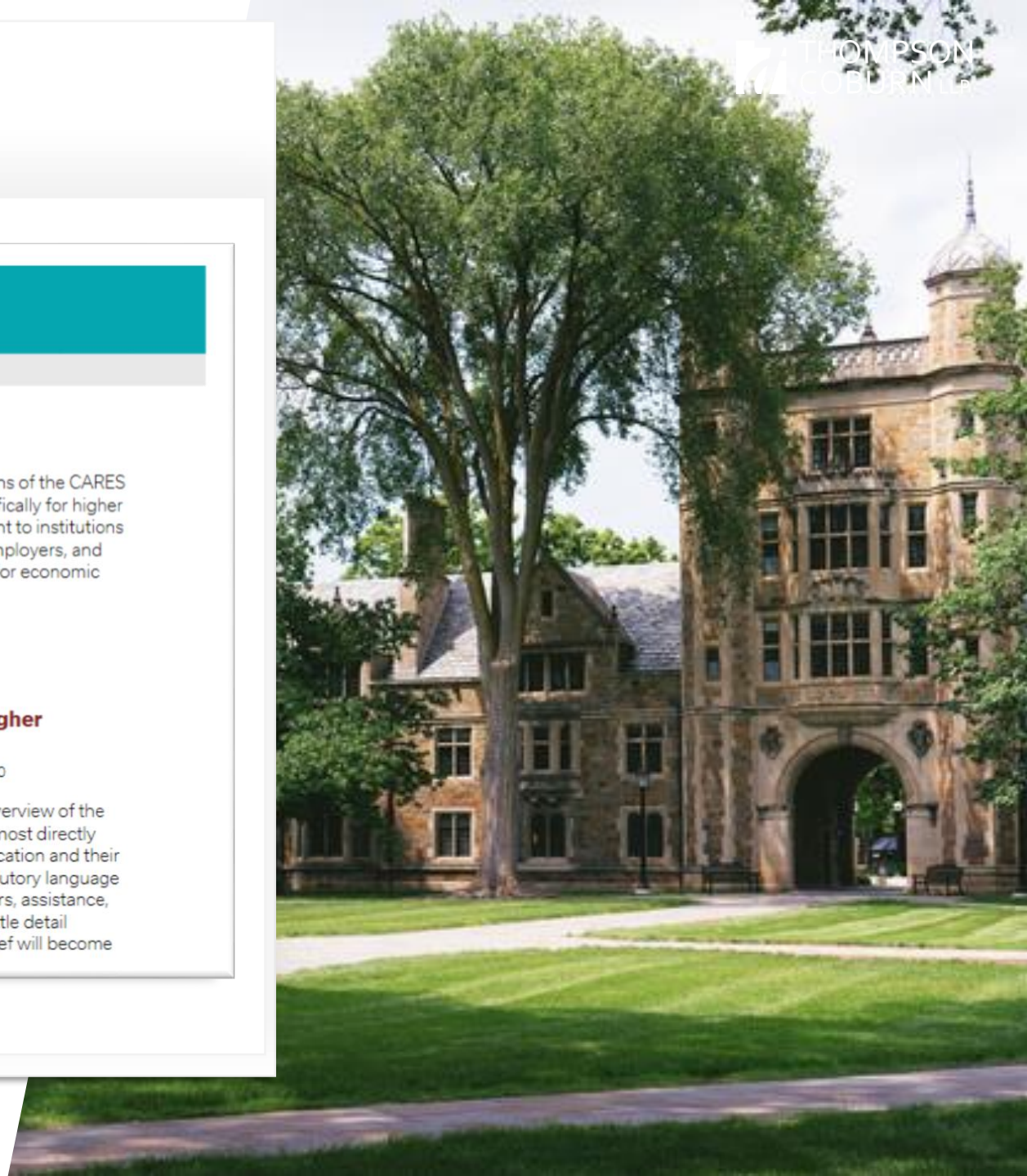
Aaron Lacey | Christopher Murray | Scott Goldschmidt | April 3, 2020

This is a brief overview of provisions of the CARES Act that, while not designed specifically for higher education, are nonetheless relevant to institutions in their roles as businesses and employers, and which may provide opportunities for economic relief. READ MORE

The CARES Act: Summary of provisions impacting higher education institutions and borrowers

Scott Goldschmidt | Aaron Lacey | Christopher Murray | March 27, 2020

In this article, we provide a brief overview of the provisions of the CARES Act that most directly concern institutions of higher education and their borrowers. In some cases, the statutory language contemplates extraordinary waivers, assistance, and accommodations, with very little detail regarding when and how such relief will become



TC Extra Credit

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REGucation ALERT

REGucation
Regulatory & Policy Insights from the Thompson Coburn Higher Education Team

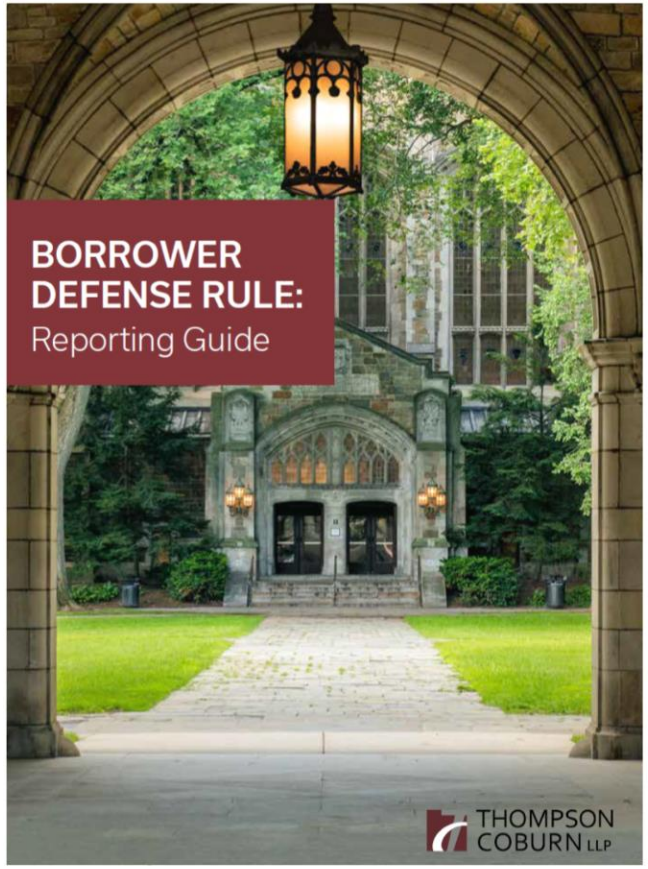
ED issues instructions to Higher Ed to obtain CARES Act funds

Earlier this afternoon, the U.S. Department of Education sent a letter to institutional leaders detailing the process for securing the first round of relief funds under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The Department has included a breakdown of the funds each institution will receive under the Higher Education Emergency Relief Fund, as well as a Certificate of Agreement that must completed.

Learn More

Aaron Lacey
314 552 6405 direct
Email | Twitter | LinkedIn

Aaron Lacey is the leader of Thompson Coburn's Higher Education practice, host of the firm's popular Higher Education Webinar Series, and editorial director of REGucation, the firm's higher education law and policy blog.



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Professional Profile

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- Counsel, Higher Education Practice

Practice and Experience

- Former Deputy General Counsel for Catholic University, brings in-house perspective to legal, regulatory, and compliance issues faced by institutions.
- Routinely assists with matters involving discrimination law, student affairs, contract drafting and review, and policy development.

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Professional Profile

Aaron Lacey

- Partner and Chair, Higher Education Practice

Practice and Experience

- Provide regulatory counsel on federal, state, and accrediting agency laws and standards governing higher education.
- Represent institutions in administrative proceedings before state licensing entities, accrediting agencies, and the U.S. Department of Education, including matters arising from audits and investigations of the Office for Civil Rights.

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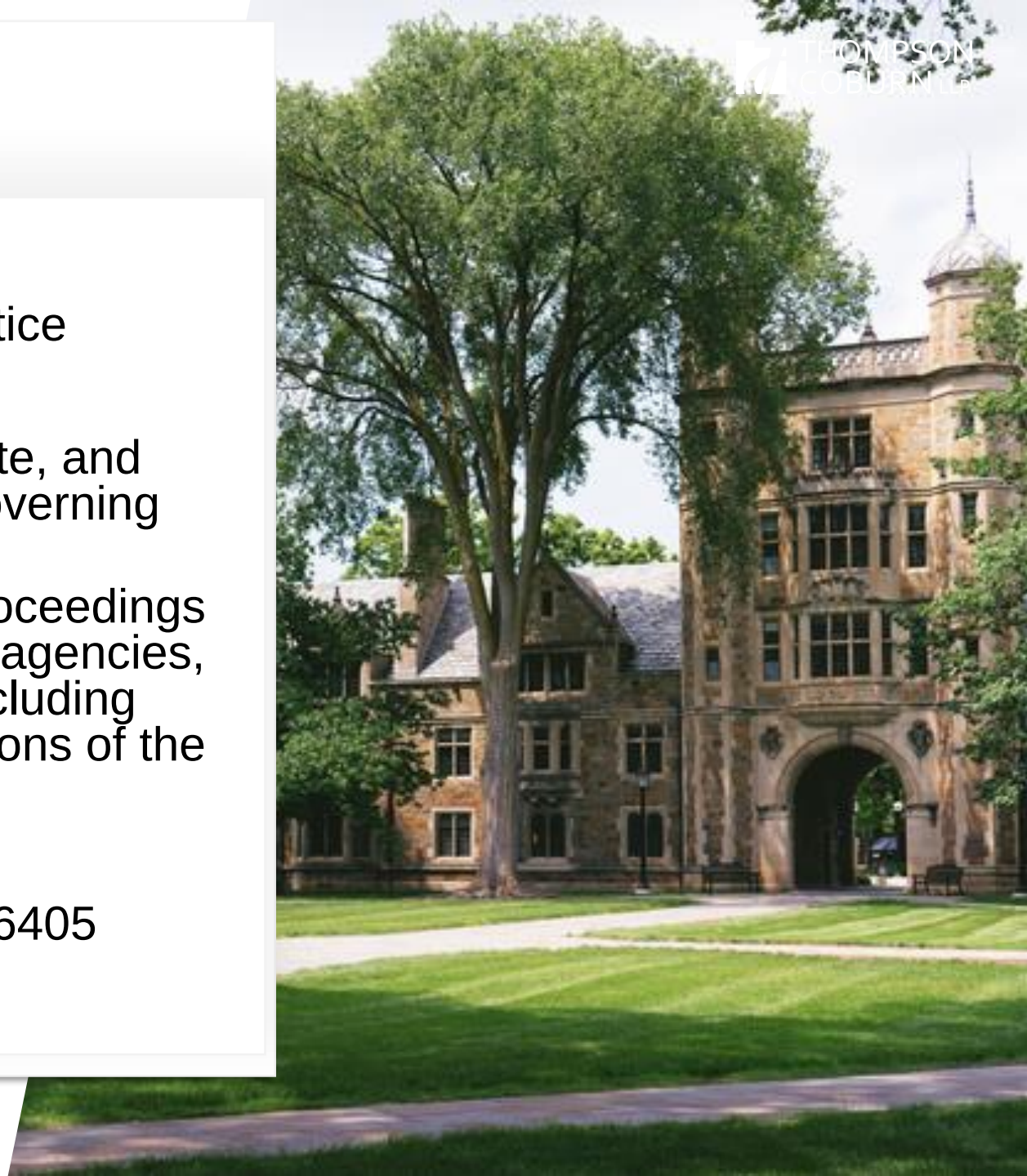

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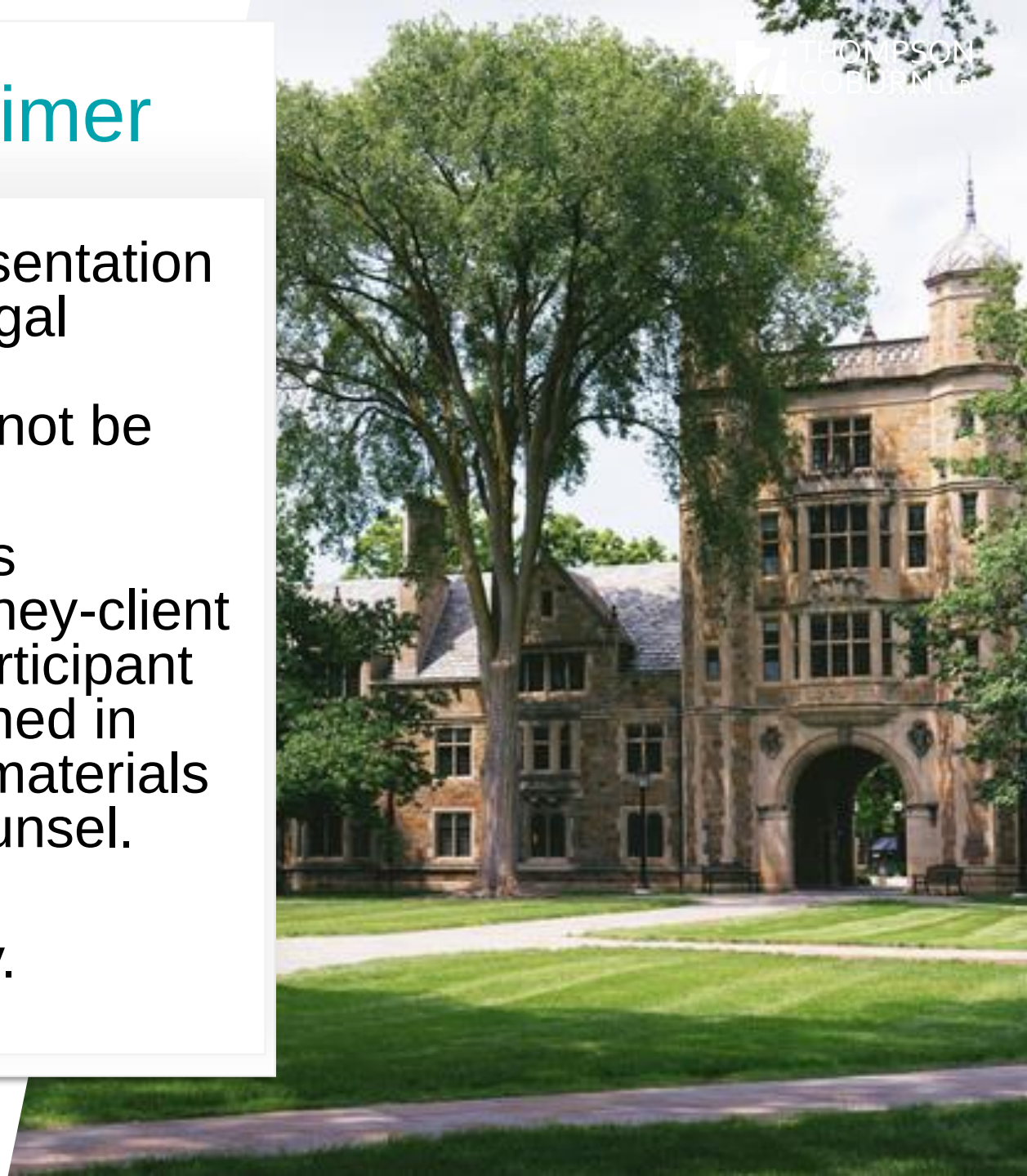
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