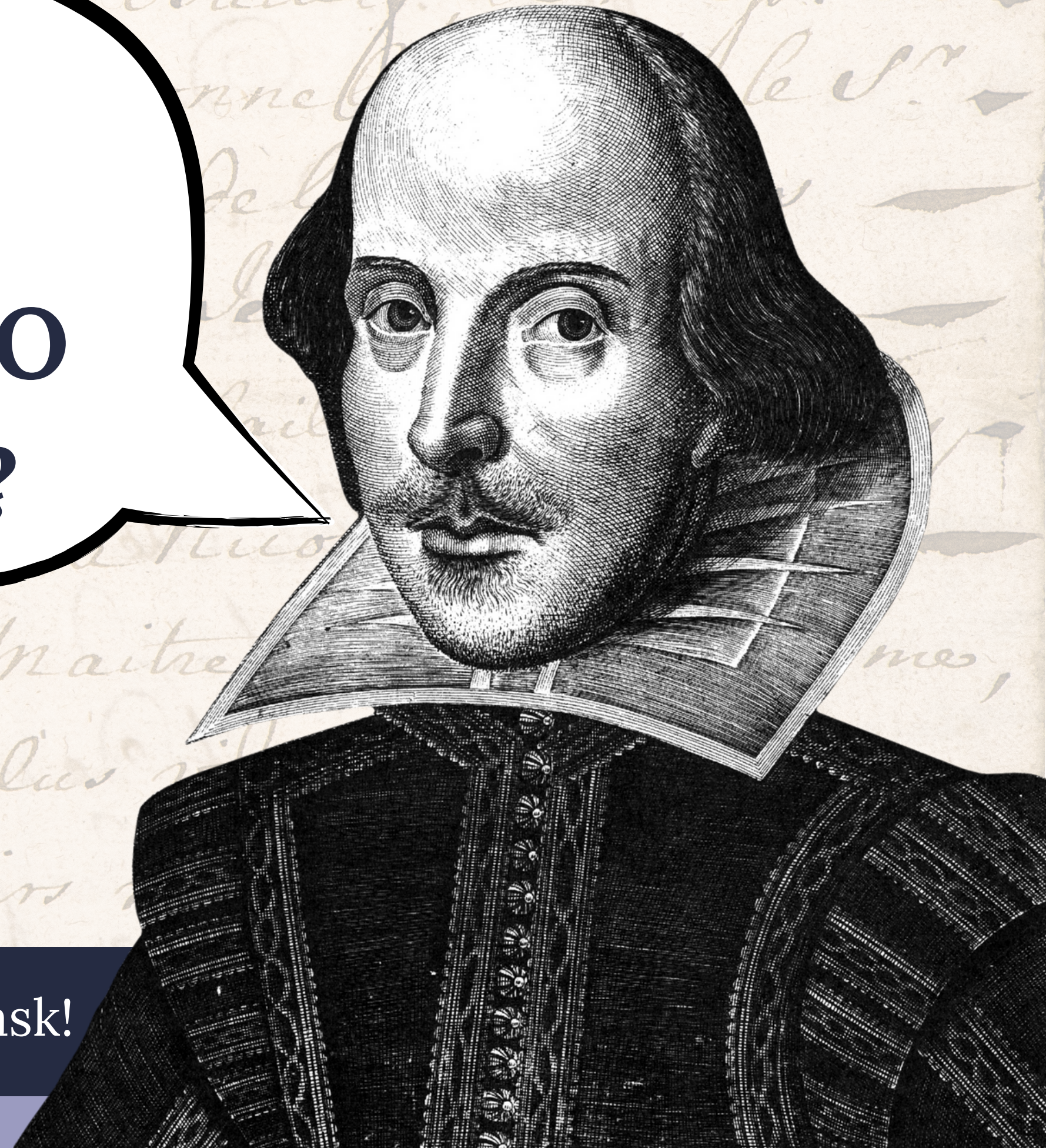


TITLE IX SOLUTIONS, LLC

TO DO A HEARING OR NOT TO DO A HEARING?

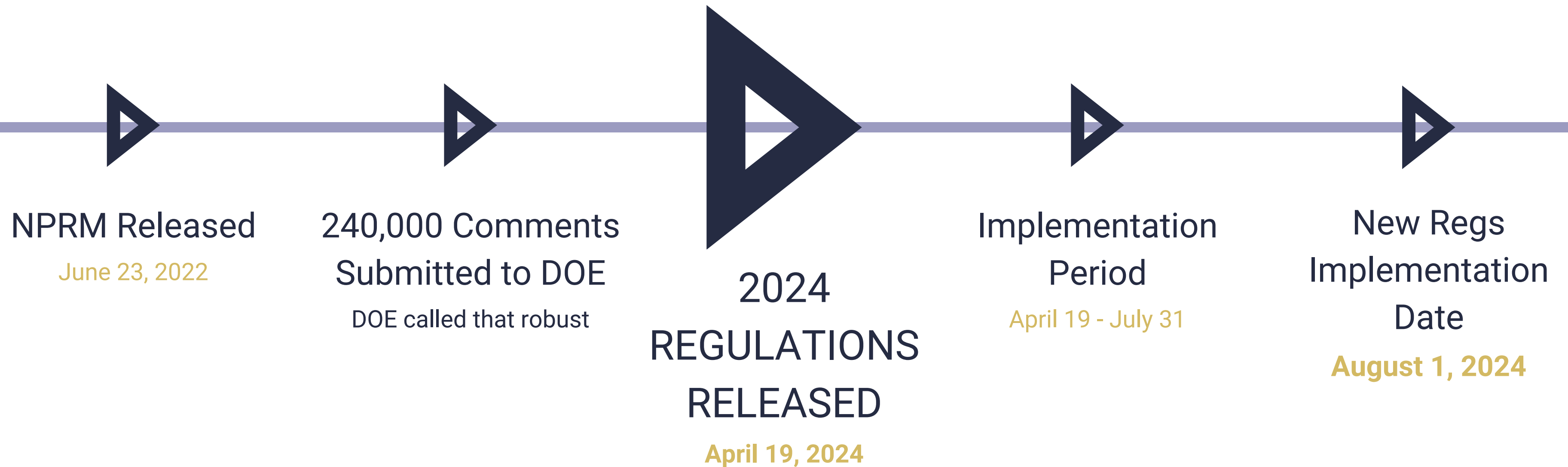
2024 Title IX Regulations Workshop

**TO DO A
HEARING
OR NOT TO DO
A HEARING?**



That is the question that Shakespeare would ask!

2024 REGULATIONS TIMELINE



IX The purpose of Title IX remains the same:
Ensure that no person experiences sex-based discrimination in educational programs or activities that receive federal financial assistance.

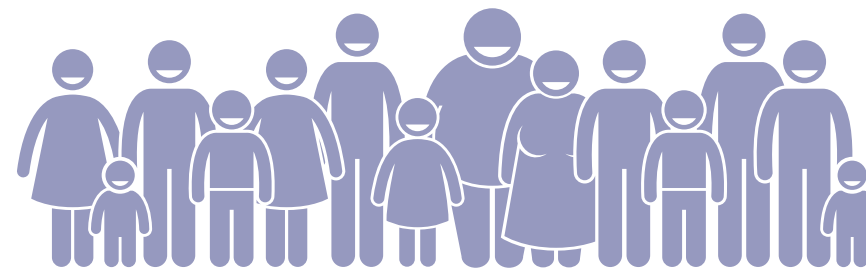
REGULATIONS PREAMBLE

GENERAL

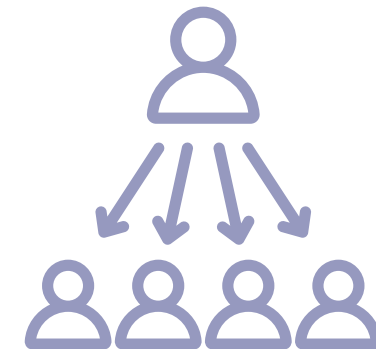
- New regulations better account for the variety of schools and provide discretion and flexibility for schools to account for:



Variations in school size



Student population



Administrative structures

- DOE estimates that the new definition of “sex-based harassment” will cause a 10% increase in investigations compared to the 2020 amendments
 - Trade off that gives the school the discretion to:
 - Decide if the school will implement a single investigator model
 - Decide if the school will require a live hearing

REGULATIONS PREAMBLE

LIVE HEARING COMMENTS

SUPPORTED REMOVAL

- More flexibility to adopt practices based on school's unique environment
- Optional live hearing will allow smaller schools to pursue alternatives to the live hearing that encourages reporting and reduces fear of retaliation
- Burden and trauma to Complainant—may not seek support
- Live hearing chills reporting

SUPPORTED RETAINING

- Due process and fundamental fairness
- Cross examination is valuable when parties are adults; balances the parties' rights
- Discretion granted to school -- less transparency, accountability and removes procedural safeguards
- Credibility of witnesses and parties best assessed in a live hearing
- Live hearings opportune for full and unbiased presentation of evidence

DOE RESPONSE

Due process and fundamental fairness do not require every school to hold live hearings as long as the school provides another live questioning process

- School has latitude to structure their grievance process
- School can set policy and procedures when they will utilize a live hearing
 - Both parties are students
 - Sanction is suspension or expulsion
 - Both parties consent in writing to a live hearing
- School must provide a live questioning process that allows the Decision-Maker to assess the credibility of parties and witnesses when credibility is in dispute
 - Decision-Maker may rely on investigator's assessment of credibility



When is credibility not in dispute?

TAKE NOTE!

Courts have not ruled on what procedures satisfy due process within the Title IX sex-based harassment grievance procedure!



Example: *Doe v. Baum* (903 F.3d 575 (6th Cir. 2018))

The 6th Circuit (MI/OH/KY/TN) court held, “if a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder.”

QUESTIONS TO CONSIDER

Scenario

In the Fall of 2024, Emma filed a formal complaint against her ex-boyfriend Liam for dating violence during their relationship. The investigation (under the single investigator model) has completed and Emma and Liam's institution has opted to not have a live hearing under the new Title IX regulations and to assess credibility through a different approach. Liam has denied all the allegations; however, Emma has requested that the institution conduct a live hearing because she believes that the investigator did not do a full and complete investigation.

- Should the institution consider Emma's request to have a live hearing?
- Should the Title IX Coordinator ask for input from the parties or their advisors?

QUESTIONS TO CONSIDER

Scenario

Kofi and Diego are juniors at a higher education institution. In October of 2024, Diego filed a formal Title IX complaint against Kofi for stalking. Following the investigation, the facts are largely established. The Title IX Coordinator walked both parties through the updated decision-making process, which no longer includes a live hearing. Kofi and Diego both request to conduct a live hearing rather than participate in the credibility assessment process that the institution has implemented. The institution declines to do a live hearing.

- If live hearings are at the discretion of the school, who makes that decision and how is that decided?
- Do you offer live hearing as a procedure and let the parties decide for themselves?

POLICY DEVELOPMENT

*It is all about the policy
adapted by the school!*



Set forth in the policy when live hearing will not occur and the process for live questioning by each party.



Set forth in the policy when live hearings will be offered.

- Perhaps when there are serious or life-altering consequences attached to a decision.



Show your work in your policy. Be as specific as possible as to your decision-making and credibility assessment process.



The Decision-Maker must follow the school policy and procedures.

TAKE NOTE!

Decision-Maker can now be the Investigator
or the Title IX Coordinator



Questions to Consider:

Does this “bake in” a bias?

Does this bias meet appeal grounds?

What is best practice?



QUESTIONS?

Head over to our **2024 New Regulations Thinkific Community** to ask your questions, connect with fellow Title IX Administrators and experts, and see what questions others have!

Can't find the community? Check out our *Community Guidelines* PDF in the Introduction chapter or email Cara Kuhn at cara@titleixsolutions.com.