

T I T L E I X



C O N S U L T
L L C

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Overview of Training

- Introduction to Title IX law
- Title IX regulations
- Title IX legal obligation
- Title IX Coordinator – responsibilities and notifications
 - Impartiality, Stereotypes, Bias, Conflicts of Interest, Trauma
- Employees with responsibility to report
- Notice of sexual harassment
- Grievance process
 - Informal resolution
 - Hearings
 - Appeals
- Policies and process
- State law considerations
- Other compliance issues



Title IX Law

- 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.
- Enforced through the Department of Education, Office for Civil Rights (OCR)



Rescinded Guidance from OCR
under Obama administration

2015
Title IX Coordinator

2011, 2014, 2016

2017
Q&A on Campus Sexual
Misconduct

BINDING GUIDANCE ON TITLE IX

2001
Regulations on Title IX

1998-1999
Supreme Court decisions on
Title IX

2020

Final Rules on Title IX
(effective 8/14/20)

2021

Notice of Interpretation –
sexual orientation/gender
identity

Questions and Answers on
New Regs



LEGAL OBLIGATION

Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institutions' education programs or activities against a person in the United States.



Title IX Covers and Includes

- Prohibition of Sex Discrimination
- Harassment
- Athletics
- Employment
- Pregnant Students
- Recruitment, Admission, Programs



Title IX Coordinator

Name and title

Office address

Email address

Phone number



Title IX Coordinator Information

Must be shared with:

- Students
- Parents
- Employees
- Applicants for admission
- Applicants for employment
- Unions and/or parties to collective bargaining agreements

Must promptly display contact information in each handbook or catalog made available to those persons

Must notify these individuals of non-discrimination

Must include notice of grievance procedure



Title IX Coordinator Responsibilities

- Coordinate the Title IX response on behalf of the school
- Monitor outcomes and identify patterns
- Adoption of Title IX policy and procedure
- Access to relevant data (i.e., participation, budgets)
- Information easily found and in designated publications
- Permitted to conduct investigations
- Permitted to oversee investigations
- Avoiding conflicts of interest, including exclusion from serving as the decision-maker

Appropriate authority, qualifications, training, and time (2015
Guidance - rescinded)



Coordinate the School's Response

- Receive reports of claims and potential claims
- Provide required notices
- Examine and (re-examine) supportive measures
- Determine appropriateness of a potential removal proceeding
- In some instances, act as investigator
- Identify proper decision-maker
- Decide who will manage an appeal, if necessary
- Coordinate investigation, sharing of information between the parties, final outcome letter, and offering of appeal options
- Ensure proper documentation
- Provide training



Monitor Outcomes and Identify Patterns

Intake

- Formal complaints from allegations
- School sites

Investigation

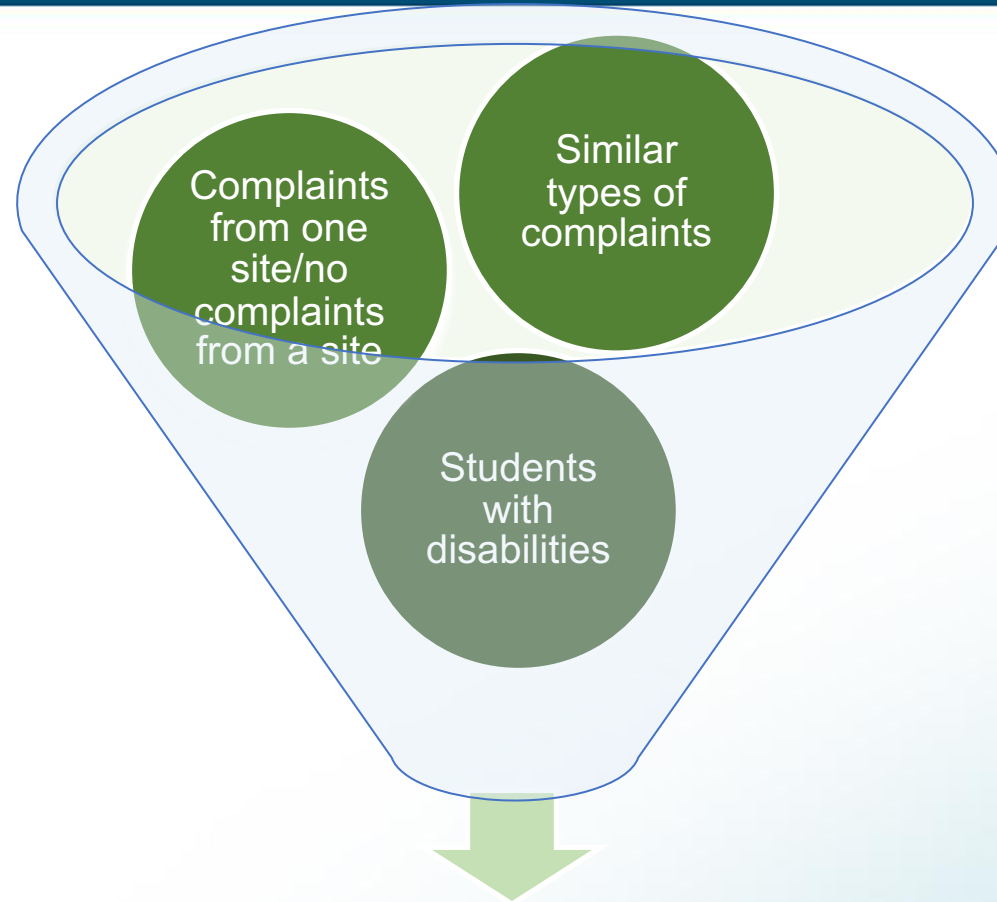
- In-house
- External
- Title IX and state Sexual Harassment

Outcomes

- Timelines
- Policy violations
- Discipline



Potential Patterns



Data analysis for planning purposes



Policy and Procedures Administration

- Review annually
- Take into account the time-consuming board review and approval process
- Set timelines for your process



Impartiality

- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Confront and understand bias and not allow it to impact decision
- Maintain open mind as to the potential conclusions



Conflicts of Interest

- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived



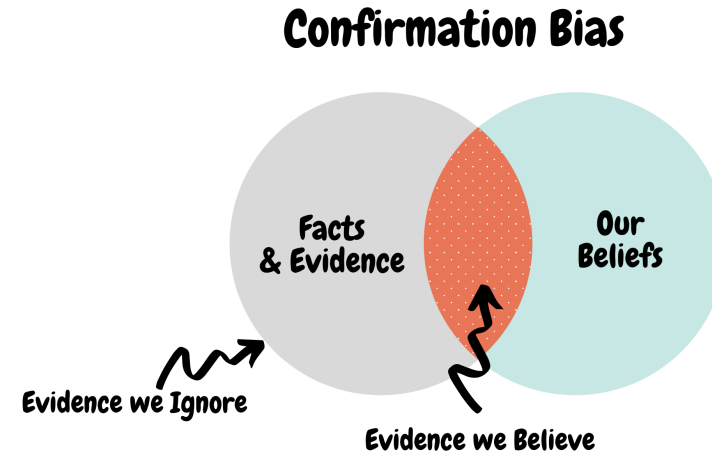
Stereotypes

- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent



Bias

- Conscious/Explicit
 - Discriminatory intent
 - Stated preferences
- Unconscious/Implicit
 - For the most part, most people are unaware of these drivers
 - Developed over a period time and can influence many factors in hearing
 - Short cuts developed by the brain and often play a role in:
 - Immediate response to conflict
 - Often mimics fear responses



Trauma

- Many Title IX causes of action involve trauma
- Title IX Coordinators should understand the impact of trauma on:
 - Reaction to trauma
 - Ability to capture memories
 - Recollection of memories
- Expectations around trauma victim



Title IX – Parties and Administrators

Parties

- Complainant – alleged victim/survivor
- Respondent – respond the allegation

Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Hearing Officer/Panel (Decision-maker)
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer



LEGAL OBLIGATION

Educational institutions must respond in a manner that is not deliberately indifferent when it has **actual knowledge of sexual harassment** occurring in the institutions' education programs or activities against a person in the United States.



Actual Knowledge

When sexual harassment or allegations of sexual harassment come to the attention of:

- Title IX Coordinator
- Official with authority to institute corrective measures
 - depends upon the institution's operational structure and the employee's specific roles and duties
 - discretion to designate which of its employees must report sexual harassment disclosures to the Title IX Coordinator and which employees can remain as confidential resources



LEGAL OBLIGATION

Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment **occurring in the institutions' education programs or activities against a person in the United States.**



Jurisdiction Issues

- Occurring in the institution's education program or activity
includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred
- Against a person in the United States



GP: Dismissal - Mandatory and Permissive

Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination



Definition of Sexual Harassment

Conduct on the basis of sex:

- **Quid pro quo** - An employee who conditions the receipt of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
- **Hostile environment** sexual harassment, defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added).



Definition of Sexual Harassment, continued

Sexual Assault, as defined in 20 USC 1092(f)(6)(A)(v)

- Rape
- Fondling
- Incest
- Statutory Rape

Dating/Domestic Violence

Stalking

Section 106.30



Notice of Interpretation - US Department of Education

- Bostick v. Clayton County
- Prohibition against sex discrimination includes protections for:
 - Sexual orientation
 - Gender identity



Grievance Process (GP)

- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
 - Emergency removal
- Offer of formal process
 - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - designate the retaliation complaint process



GP: Emergency Removal Procedure

- Step 1 – Conduct a prompt individualized safety and risk analysis
- Step 2 – Immediate threat to the safety the physical health or safety of any student or other individual Arising from the allegations of sexual harassment
- Step 3 – Evaluate the applicability of disability laws to the removal decision
- Step 4 – Consider the appropriateness of supportive measures in lieu of an emergency removal
- Step 5 – Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal



GP: Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent and are designed to restore or preserve equal access to the District's education programs or activities without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment



GP: Offer of Formal Process

- Complainant offered formal process
- Complainant must file and request an investigation
 - Filing can be in person, by phone, email
- Wishes of complainant are to be respected



GP: No Formal Complaint Filed

- Title IX Coordinator may decide to proceed with investigation
- Title IX Coordinator does not become Complainant



GP: Informal Resolution

- Trained facilitators
- After formal complaint is filed
- Process must be detailed in writing
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted
- Never available when complainant is student and respondent is employee



GP: Notice of Allegations

- Detailed allegations against respondent
- Supportive measures offered to respondent
- No supportive measure can appear disciplinary



GP: Separate Decision-Makers

- Title IX Coordinator may serve as investigator
- Title IX Coordinator may NOT serve as decision-maker
 - Policy violation
 - Discipline
- Hearing panels required for colleges and universities



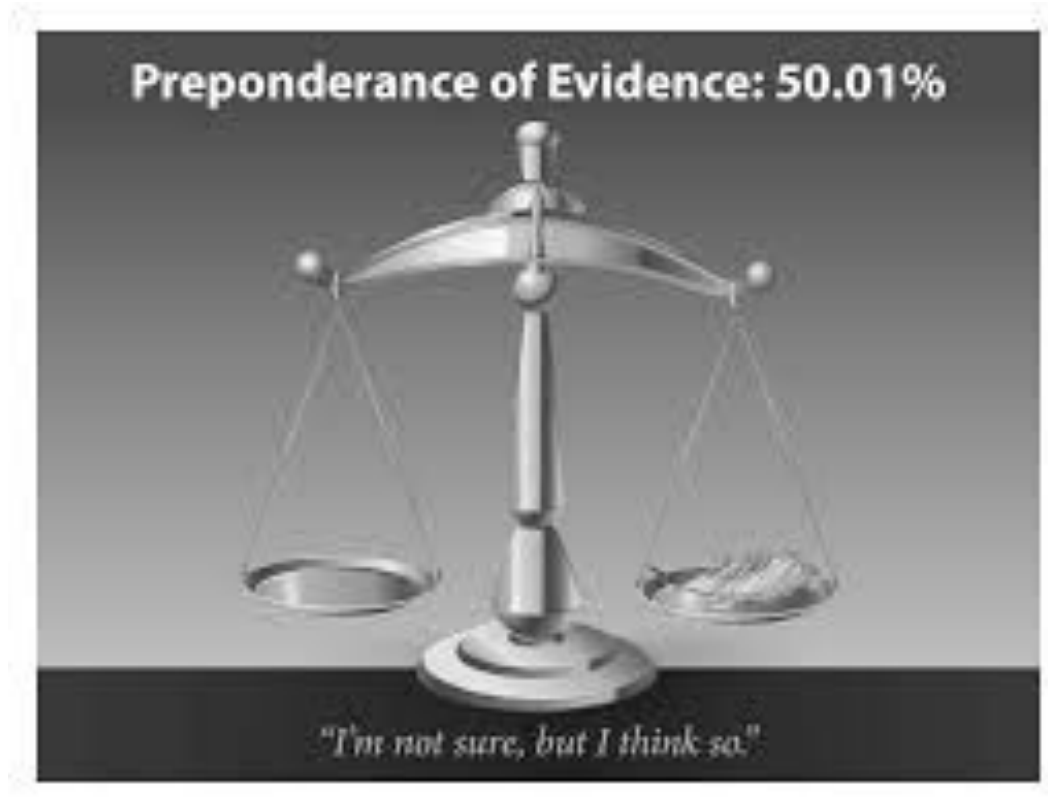
GP: Investigation

- Investigation gathers relevant and irrelevant information
- All information must be shared with both parties
- Parties have ability to review investigation report and outcome, provide comments/written questions and provide answers and limited follow-up



GP: Burden of Proof

- Preponderance of the evidence
- Clear and convincing



GP: Decision-Maker

- Decision-maker(Hearing Officer or Hearing Panel) must determine:
 - Policy violation; and
 - Discipline



GP: Hearing Process

- Live hearings (in person and remote)
- Advisors at hearing (even when party may not appear)
- Participation cannot be compelled
- Cross examination by advisors
- Evidence evaluated by hearing officer/panel
- Evidence may be excluded if no cross examination (in flux)
- Outcome of policy violation and discipline issued

- Complex process that requires significant support



GP: Evidence Review

- RELEVANCE – Applying to the matter in question; affording something to the purpose (Black’s Law Dictionary)
- NOT permitted:
 - Sexual history of Complainant (see Rape Shield exception)
 - Privileged communications
 - Medical documentation
- Not repetitive



GP: Rape Shield Protection

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- unless such questions are offered to
 - prove that someone other than the respondent committed the conduct
 - are offered to prove consent.

Section 106.45(b)(6)(i)



GP: Appeal

- Procedural irregularity in the Title IX grievance process affected the outcome;
- Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome; or
- Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker (hearing panel/hearing officer) that affected the outcome.



Title IX and Sexual Harassment

Policies and Process



Title IX New Regulations Impact College Policies

Review Policies

- Employee policies
- Sexual Harassment
- Nondiscrimination

Student Policies

- Sexual Harassment
- Nondiscrimination

Process

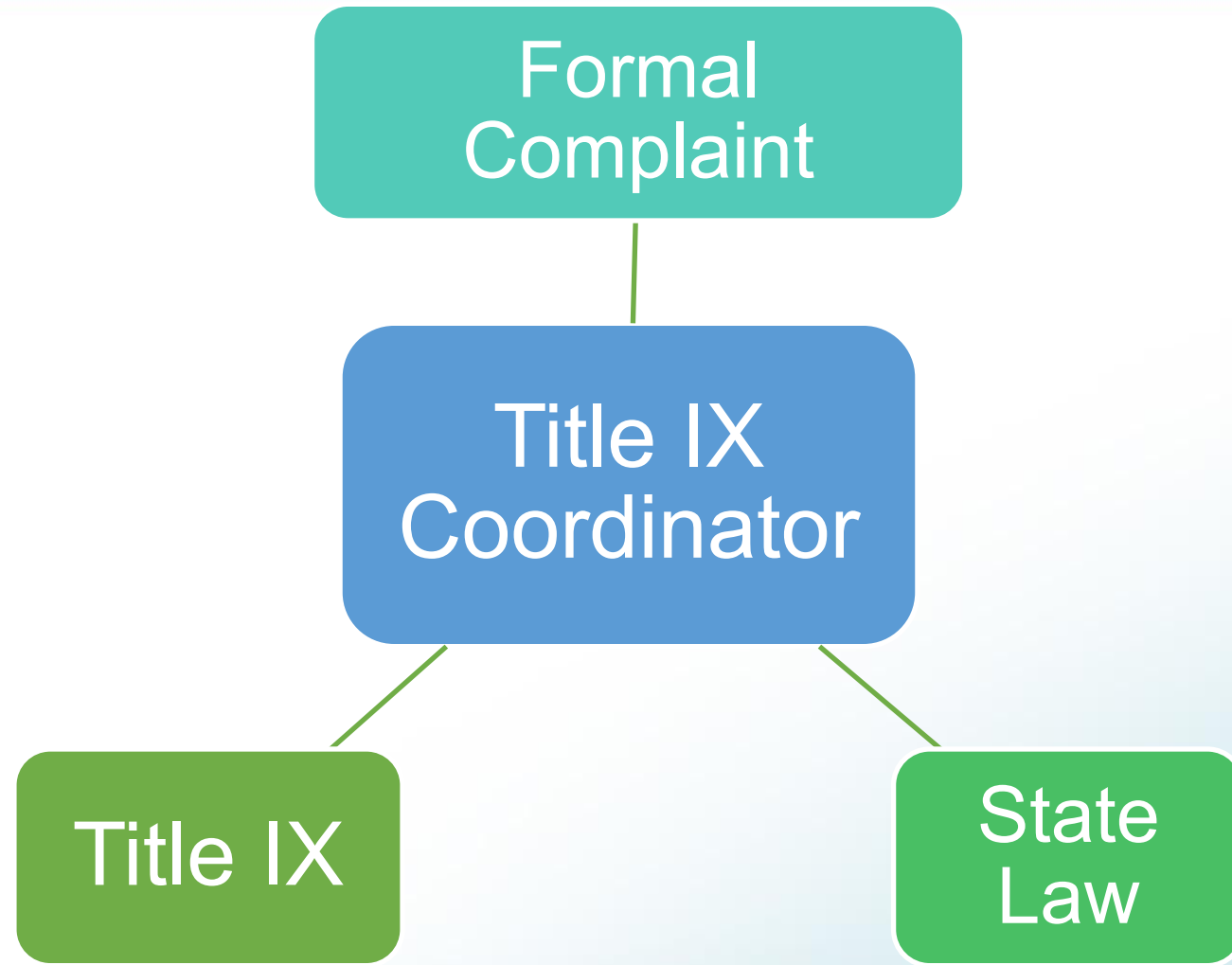


Other Considerations

- Title IX and state law interaction
- Title IX file review
- Community outreach
 - Climate surveys
 - Focus groups
 - Student/parents special interest groups



Review: Title IX and State Law Process



GP: Process Review

Notice of potential Title IX matter

Intake from Complainant

Offer of formal process and advise
of informal resolution options

Supportive measures

Formal process initiated

Determination of process that
applies

Notice of Allegations (Title IX)



QUESTIONS?

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