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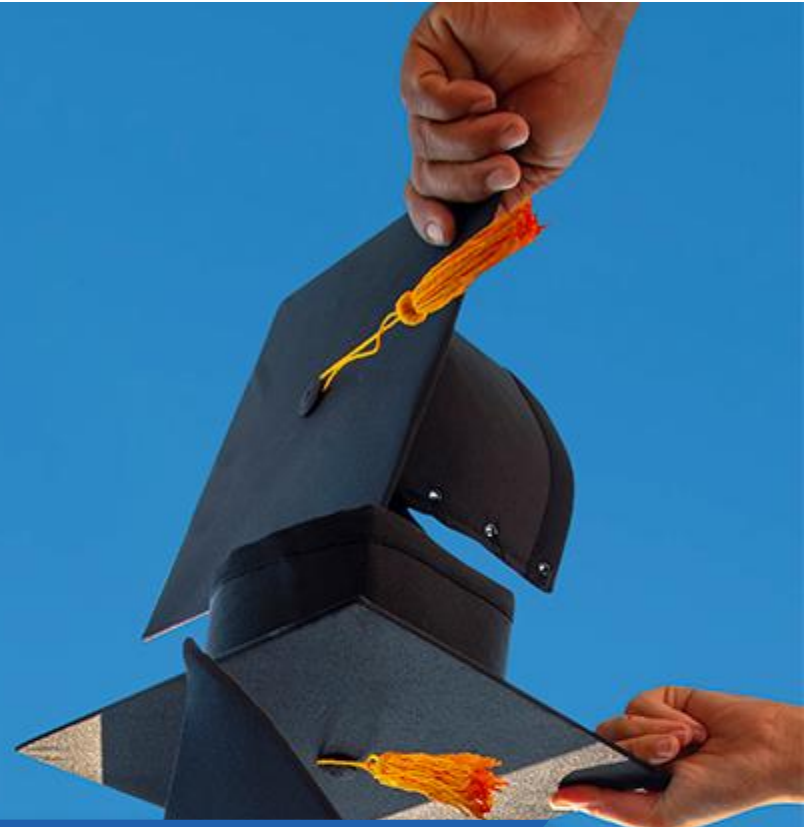
Title IX Coordinator Certification Higher Education

Session 1: Title IX Roles and Responsibilities



Presented by: Richard F. Verstegen

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Overview

I **Introduction**

- Scope of Discussion
- Impact of Regulations

II **Basics of Title IX**

III **Procedural Requirements**

IV **Responsibilities of Title IX Coordinator**

V **Conclusion**

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Introduction

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Poll Question

How would you best describe your position with the school?

- Only Title IX responsibilities
- Mainly student services with some Title IX
- Mainly human resources with some Title IX
- Other

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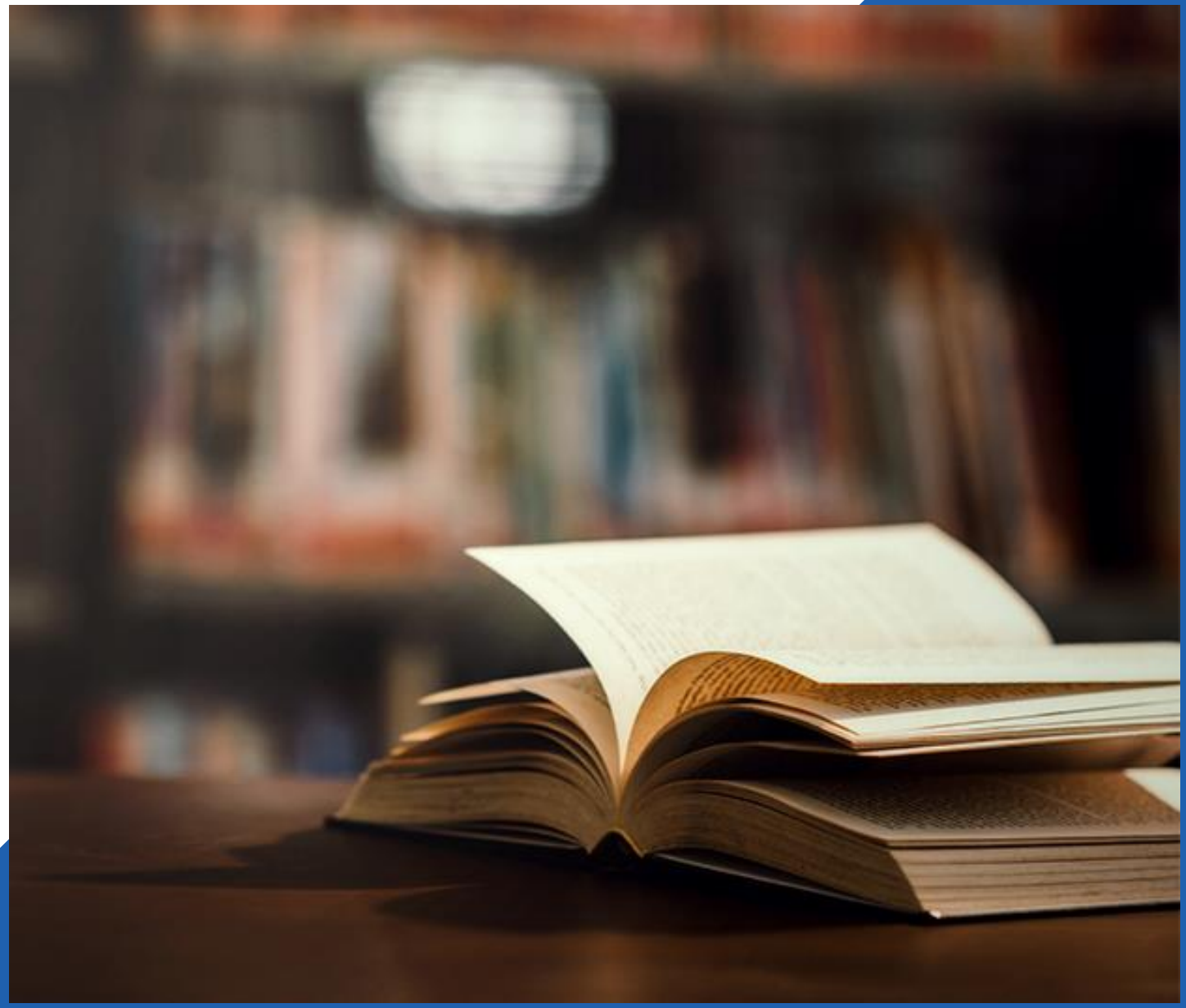
Introduction

- **Title IX procedural requirements**
- **Other responsibilities**
  - Addressing conflicts of interest
- **Recordkeeping and monitoring**



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The Basics

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History Leading to Title IX

- **Road to Title IX**
  - Protections for women gained significant momentum from the racial movement of the 1960s.
  - After the Civil Rights Act of 1964, women's rights activists sought greater protection in the law.
  - In 1970, Representative Edith Green (D-Ohio) drafted legislation prohibiting sex discrimination in education.
  - In 1972, Title IX was enacted.

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The Law

- **Title IX**
  - No person in the U.S. 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.
- **Title IX Regulations**
  - 34 C.F.R. 106
- **Enforced by Office of Civil Rights/state education agencies**

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Application of Title IX

- **Scope of Title IX**
  - All public and private elementary and secondary schools, school districts, colleges and universities receiving federal funds (“recipients”) must comply with Title IX.
  - Application of Title IX is institution-wide.
  - All students (as well as other persons) at recipient institutions are protected by Title IX.

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Application of Title IX

Programs or activities

- **General prohibition**
  - Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. 34 C.F.R. s. 106.31(a).

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Application of Title IX

Programs or activities

- Specific prohibitions
  - Except as provided in this subpart, an educational institution in providing any aid, benefit, or service to a student, may not, on the basis of sex:
    - Treat one person differently from another in determining whether the person satisfies any requirement or condition for the provision of any aid, benefit, or service;
    - Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
    - Deny any person such aid, benefit, or service;
    - Subject any person to separate or different rules of behavior, sanctions, or other treatment; or
    - Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.
- 34 C.F.R. s. 106.31(b)

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Application of Title IX

- **Discipline**
  - Title IX prohibits a recipient from subjecting any person to separate or different rules of behavior, sanctions, or other treatment, such as discriminatory discipline, based on sex.
  - See Dear Colleague Letter, Nondiscriminatory Administration of Discipline, January 8, 2014.

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Application of Title IX

- **Employment and benefits**
  - A recipient is also generally prohibited from discriminating on the basis of sex in employment or recruitment.
  - This includes employment actions, such as hiring, promotion, compensation, grants of leave, and benefits.
  - These provisions also protect against discrimination based on an applicant's or employee's pregnancy or marital or parental status.

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Application of Title IX

- **Other areas**
  - Admission
  - Pregnancy
  - Sexual harassment
  - Athletics

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Procedural Requirements

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Poll Question

How much experience do you have with Title IX issues?

- Less than 1 year
- Between 1 and 5 years
- Between 5 and 10 years
- More than 10 years

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Procedural Requirements

Subpart A- Introduction

- Changes to Section 106.8– procedural requirements
  - Must designate and authorize at least one employee to coordinate its efforts to comply with responsibilities under this part
  - Employee must be referred to as the “Title IX Coordinator.”
  - Must notify certain persons of the name or title, office address, email address, and telephone number of the Title IX Coordinator
  - The persons include applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations, holding collective bargaining or professional agreements with the institution.

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Procedural Requirements

Subpart A– introduction

- Changes to Section 106.8– procedural requirements
  - Must disseminate a policy of non-discrimination
  - Must notify same persons (1) that the institution does not discriminate on the basis of sex in the education program or activity that it is operates and (2) that it is required by Title IX and this part not to discriminate in such a manner
  - Must state in notice that this requirement not to discriminate extends to admission (if applicable) and employment
  - Must state in notice that inquires about the application of Title IX and this part may be referred to the Title IX Coordinator, the Assistant Secretary, or both

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Procedural Requirements

Subpart A- Introduction

- Changes to Section 106.8– procedural requirements
  - Must follow publication requirements
  - Must prominently display the contact information for the Title IX Coordinator (discussed above) and the policy (discussed above) on:
    - Its website, and
    - In each handbook or catalog that it makes available to the persons (discussed above).
  - Must not distribute publication stating that the institution treats groups differently on the basis of sex, except as permitted under Title IX

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Procedural Requirements

Subpart A– introduction

- Changes to Section 106.8– procedural requirements
  - Must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part
  - Must adopt and publish a grievance process that complies with 34 CFR 106.45 for formal complaints of sexual harassment
  - Must provide persons (above) notice of the grievance procedure and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond
  - Applies only to sex discrimination occurring against a person in the U.S.

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Grievance Procedure

- **Important elements**
  - Notice to students and employees of the grievance procedures, including where complaints may be filed
  - Application of the grievance procedure to complaints filed by students or on their behalf alleging sexual discrimination carried out by employees, other students, or third parties
  - Provisions for adequate, reliable, and impartial investigations of complaints
  - Written notice to the complainant perpetrator of the outcome of the complaint
  - Assurance that the institution will take steps to prevent recurrence of any sexual discrimination and remedy discriminatory effects on the complainant and others, if appropriate
  - Designated and reasonably prompt time frames for the major stages of the complaint process

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Grievance Process

- **Grievance process components**
  - Basic requirements
  - Investigation
  - Hearing
  - Determination regarding responsibility
  - Appeals

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Grievance Process– Basic Requirements

- Must treat complainants and respondents equitably
    - Provide remedies to a complainant where a determination of responsibility has been made against the respondent.
    - Follow a grievance process that complies with this part before the imposition of any disciplinary sanctions or other actions against a respondent.
- Require an objective evaluation of all relevant evidence and provide that credibility determinations may not be based on person's status.
- Require that any individual designated by an institution as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias.

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Grievance Process– Basic Requirements

- Includes a presumption that the respondent is not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process
- Includes reasonably prompt time frames for conclusion of the grievance process
    - Must include process that allows for temporary delay for good cause with written notice to complainant and respondent of the delay and the reasons for action
    - Good cause may include considerations such as absence of a party, a party's advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

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Grievance Process– Basic Requirements

- Describe the range of (or list) possible disciplinary sanctions and remedies that the institution may implement following determination of responsibility.
- State whether the standard of evidence to be used to determine responsibility is preponderance of the evidence or clear and convincing evidence.
    - Must apply same standard for formal complaints against students as for formal complaints against employees
    - Must apply same standard to all formal complaints of sexual harassment

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Grievance Process– Basic Requirements

- Include the procedures and permissible bases for the complainant and the respondent to appeal.
- Describe the range of supportive measures available to complainants and respondents.
- Must not require, allow, rely upon, or otherwise use questions or evidence that constitute information protected under a legally recognized privilege, unless person has waived privilege

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Responsibilities of Title IX Coordinator

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Poll Question

How many sexual discrimination (not harassment) cases do you receive each year?

- Around 0 to 5
- Around 6 to 10
- More than 10

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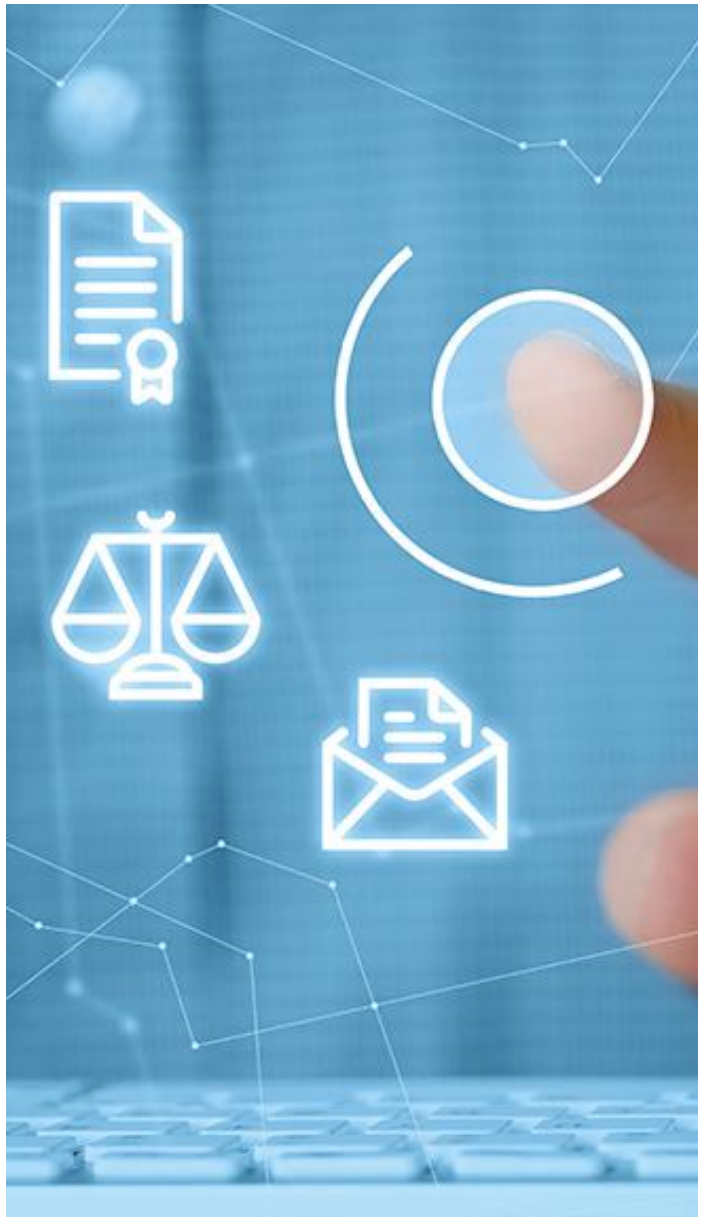
Designating a Title IX Coordinator

- An institution must designate at least one employee to coordinate its efforts to comply with Title IX.
- An institution may choose to have a number of employees responsible for Title IX matters.
- However, it is advisable to give one official responsibility for overall coordination and oversight of sexual harassment complaints to ensure consistent practices and standards.



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Title IX Coordinator Conflicts of Interest

- **Title IX Coordinator role**
  - The Title IX coordinator's role should be independent to avoid any potential conflicts of interest.
  - The Title IX coordinator should report directly to the institution's senior leadership.
  - Title IX does not categorically exclude certain employees from serving as Title IX coordinators. However, institutions should not select an employee whose job responsibilities might create a conflict of interest.

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Obligation to Title IX Coordinators

- Institutions have specific obligations to ensure that the Title IX coordinator is visible to the institution's community.
- Provide coordinators with access to information regarding incidents of sex-based harassment and other relevant information.
- Ensure that Title IX coordinators receive appropriate training and have thorough knowledge in the areas over which they have responsibility.

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Title IX Coordinator Responsibilities

- **Title IX coordinator responsibilities**
  - Coordinate institution's compliance with Title IX, including grievance procedures for resolving Title IX complaints.
  - Coordinate institution's response to all complaints involving sex discrimination.
  - Remain knowledgeable and updated about Title IX and the institution's policies and procedures.
  - Provide training and technical assistance on school policies related to sex discrimination.
  - Assist with surveying the school climate and analyze the information obtained from any survey.
  - Monitor participation in athletics and across academic fields to identify disproportionate enrollment based on sex.

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Title IX Reporting

- **Reports of discrimination/harassment**
  - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment).
  - Any person may report in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

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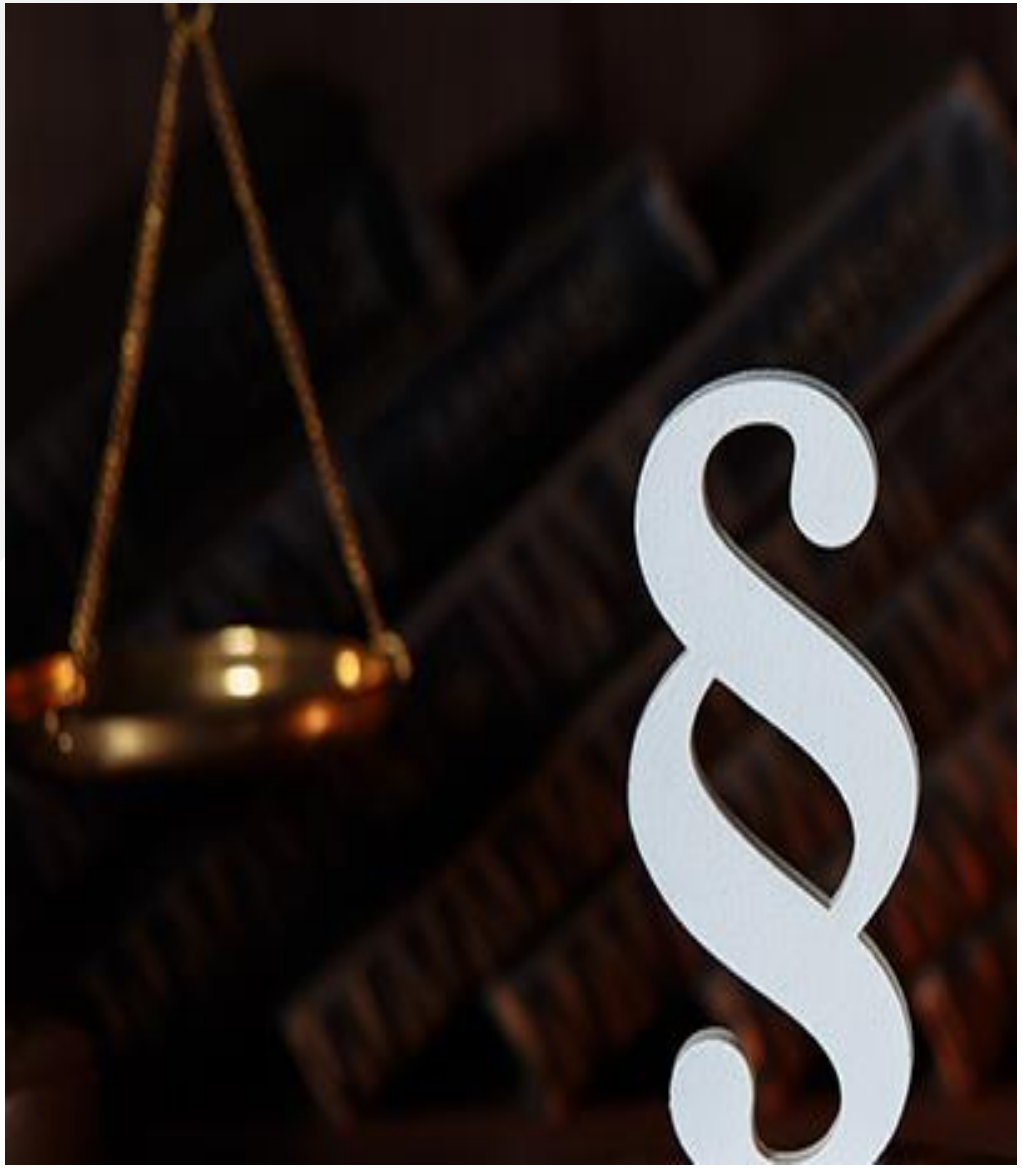
Title IX Reporting

- **Reports of discrimination/harassment**
  - A person may report sex discrimination, including sexual harassment, at any time (including during non-business hours) by using the telephone number or email address or by mail to the office address listed for the Title IX Coordinator.
  - Notice of sexual harassment (actual knowledge) includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.



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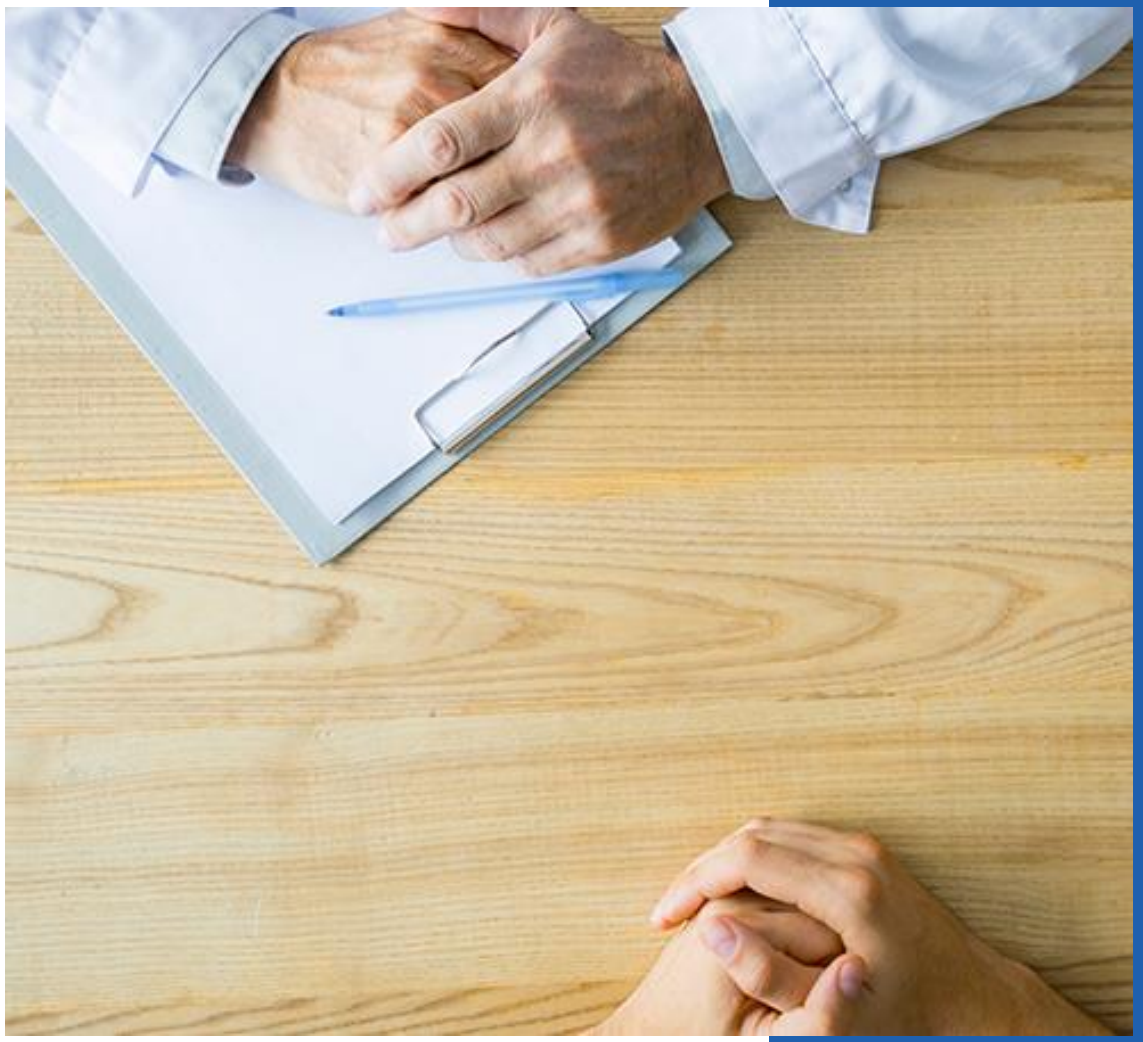

Title IX Complaints

- **Other options**
  - File a complaint with OCR.
  - Send a letter to OCR enforcement officer.
  - Not required to use the school's grievance process before filing a complaint
  - File a lawsuit in court claiming a violation; there is no need to file with OCR before filing a suit in court.

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Recordkeeping Requirements

- **An institution must maintain for a period of seven years the following records:**

    - Each sexual harassment investigation including (1) any determination regarding responsibility and any audio or audiovisual recording or transcript, (2) any disciplinary sanctions imposed on the respondent, and (3) any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;

    - Any appeal and the result therefrom;

    - Any informal resolution and the result therefrom; **and**

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Recordkeeping Requirements

- **For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:**
  - Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
  - The institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity.

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Recordkeeping Requirements

- **For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:**
    - If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
    - The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

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Recordkeeping Requirements

- **An institution must maintain for a period of seven years the following records:**
  - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
  - An institution must make these training materials publicly available on its website.

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Training Required

- **An institution must ensure that Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution process must receive training on:**
  - The definition of sexual harassment
  - The scope of the institution's education program or activity
  - How to conduct investigations and the grievance process, including hearings, appeals and informal resolution processes
  - How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias

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Training Required

- **An institution must ensure that decision-makers receive training on:**
  - Issues of relevance of questions and evidence, including when questions and evidence of the complainant's sexual predisposition or prior sexual behavior are not relevant
  - Any technology to be used at a live hearing
- **An institution must ensure that investigators receiving training on:**
  - Issues of relevance to create an investigative report that fairly summarizes evidence
- **Any materials must not rely on sex stereotypes and must promote impartial investigations and adjudications.**

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Title IX Complaints

- **Policies need to consider**
  - Interaction when claims also involve other protected classes (race, disability, etc.)
  - Interaction with other state laws
  - Interaction with overlapping federal laws (Title VII)
  - Interaction with student code of conduct

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Conclusion

V

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Conclusion

- Need to recognize roles and responsibilities
- Need to monitor activity on campus in all areas
- Need to maintain records in all areas

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Richard Verstegen
Attorney

Questions?

Boardman & Clark, LLP

https://www.boardmanclark.com

(608) 286-7233

rverstegen@boardmanclark.com

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