



Association of
Title IX Administrators

Title IX Coordinator and Administrator

Level Two Training & Certification Course

TNG

Strategic Risk
Management Solutions

The logo for ATIXA, featuring the letters A, T, I, X, and A in a stylized font. The A's are red, and the T, I, and X are blue.The logo for TNG, featuring the letters T, N, and G in a stylized font. The T and N are blue, and the G is yellow.The logo for NABITA, featuring the letters N, A, B, I, T, and A in a stylized font. The N and A's are green, and the B, I, T, and A's are blue.

Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

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CONTENT ADVISORY

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

AGENDA

- 1 Pregnant and Parenting Students
- 2 Sexual Orientation, Gender Identity, and Gender Expression
- 3 Minors and Title IX
- 4 Introduction to Title IX and Athletics
- 5 Introduction to Section 504 and the ADA
- 6 Violence Against Women Act (VAWA)
- 7 The Clery Act

AGENDA

8 Programming and Prevention Efforts

9 Sanctioning

10 Introduction to Trauma-Informed Practices

11 Introduction to Climate Assessment

12 Assessing Your Existing Program

13 Policy Management

14 Final Planning

COMMITMENT BEYOND COMPLIANCE

- Industry standards = the floor; Best practices = the ceiling
- Statutes, case law, and federal regulations set the floor
- Some states have laws which exceed federal requirements and do not conflict with the Title IX regulations.
 - Where they do conflict, the regulations control.
- Aiming for the floor = doing the bare minimum
 - Will continue the cycle of inequity and unfairness; activists won't stand for it
- Civil rights issues demand more than the bare minimum



PREGNANT AND PARENTING STUDENTS



“A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.”

34 C.F.R. § 106.40

WHY IS IT IMPORTANT TO PROTECT PREGNANT AND PARENTING STUDENTS?

“According to a survey conducted by the Bill and Melinda Gates Foundation, a third of young women who did not finish high school stated that becoming a parent played a major role in their decision to leave. Only about half of young mothers will earn a high school diploma by the age of 22, compared with 89 percent of women who did not have a child during their teenage years, and one-third of young mothers will never get a G.E.D. or a diploma.”

(Source: National Women’s Law Center: https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Final_nwlc_Gates_PregParenting.pdf)

TITLE IX AND PREGNANCY DEFINED

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

“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 educational program or activity receiving federal financial assistance.”



Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex, including pregnancy and parental status, in educational programs and activities.

WHO IS COVERED UNDER TITLE IX PREGNANT AND PARENTING STUDENT REGULATIONS?

- Female students who become pregnant or give birth during an academic school year
- Title IX regulations apply to parenting students for as long as medically necessary after childbirth
 - These protections are not indefinite

WHO IS COVERED UNDER TITLE IX PREGNANT AND PARENTING STUDENT REGULATIONS? (CONT.)

- Pregnant and parenting protections under Title IX can apply equally to the other parent of the child
 - Example: If your school or institution allows time for females to bond with or care for their children, this should apply to males and non-binary or trans* individuals as well.
 - This does not mean that if a pregnant individual is placed on bed rest and thus must miss classes for a day (which must be excused per Title IX protections), that the other parent would also have an excused absence.



PREGNANCY & TITLE IX

- June 2007 “Dear Colleague Letter”
- June 2013 DCL on Pregnant and Parenting Students
- Regulatory Language
- Case Discussion

THE OCR, TITLE IX, AND PREGNANCY

- Admissions
 - Athletics
 - Residence halls
 - Extracurricular activities
 - Health insurance
- Academics
 - Registration
 - Coursework accommodation and completion
 - Employment
 - Hiring
 - Benefits and bonuses
 - Leave and job protection upon return from leave

THE OCR, TITLE IX, AND PREGNANCY (CONT.)

June 25, 2007 “Dear Colleague Letter”

- Affirms the application of the pregnancy-related portions of the regulations to athletic departments and summarized a school’s obligations to pregnant student-athletes
- The June 25, 2007 DCL also includes:
 - Information on how to develop programs to support these students
 - An overview of students’ rights under Title IX
 - Guidance on how to submit a complaint if an individual feels their rights are not being met

THE OCR, TITLE IX, AND PREGNANCY (CONT.)

June 25, 2007 “Dear Colleague Letter”

- Although the pamphlet is focused on secondary education, the DCL states that “legal principles apply to all recipients of federal financial assistance, including postsecondary education.”

PREGNANCY & TITLE IX

June 25, 2013 DCL on pregnancy and parenting students:

- Educators must ensure pregnant and parenting students are **not discriminated against**
- Educators must ensure that pregnant and parenting students are **fully supported in preparation for graduation and careers**
- Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Pregnancy and related conditions:

- “A Recipient shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's **pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom**, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.” (34 C.F.R. § 106.40)

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Physician Certification

- “A Recipient **may require** such a student to **obtain the certification of a physician** that the student is physically and emotionally able to continue participation in the normal education program or activity **so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.**” (34 C.F.R. § 106.40)
 - “Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions.”

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Pregnancy as a Temporary Disability

- “A Recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.”
(34 C.F.R. § 106.40)

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Leave Policies

- “In the case of a Recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as **a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.**” (34 C.F.R. § 106.40)

PREGNANCY & TITLE IX: OCR GUIDANCE

Doctor's Note to Participate

- **“Schools cannot require a pregnant student to produce a doctor’s note in order to stay in school or participate in activities,** including interscholastic sports, unless the same requirement to obtain a doctor’s note applies to all students being treated by a doctor.” (34 C.F.R. § 106.40)
- **“That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; schools should not presume that a pregnant student is unable to attend school or participate in school activities.”**

PREGNANCY & TITLE IX: OCR GUIDANCE

Doctor's Note to Participate (Cont.)

- “When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed.”
- “A school may offer the student alternatives to making up missed work, such as:
 - Retaking a semester
 - Taking part in an online course credit recovery program
 - Allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave
- The student should be allowed to choose how to make up the work.”

PREGNANCY & TITLE IX: EXCUSED ABSENCES AND MEDICAL LEAVES

- Teachers and faculty must understand that they are required to excuse absences/medical leaves as determined by the Title IX Coordinator
 - May not refuse to allow work to be submitted after deadline if missed due to pregnancy or childbirth
- If grading is based in part on class participation or attendance, student must be given an opportunity to make those points up, if missed, due to pregnancy or childbirth

PREGNANCY & TITLE IX: HARASSMENT PROTECTIONS

- Recipients must protect pregnant students from harassment based on sex
 - This includes harassment because of pregnancy or pregnancy-related conditions
- Conduct that is sufficiently severe, pervasive, and objectively offensive is prohibited and must be addressed under the Recipient's sexual harassment adjudication process. Conduct can include:
 - Sexual comments or jokes about student's pregnancy
 - Sexually-charged named calling
 - Spreading rumors about sexual activity
 - Sexual propositions or gestures

PREGNANCY & TITLE IX: POLICY AND PROCEDURE REQUIREMENTS

- Develop and annually distribute a policy prohibiting sex discrimination that includes prohibited discrimination against pregnant and parenting students
- Adopt and publish grievance procedures for students to file a complaint of sex discrimination that includes discrimination related to pregnancy or parental status
- Students and employees should be aware that the Title IX Coordinator also holds the responsibility of overseeing complaints of discrimination against pregnant and parenting students

ATHLETICS, PREGNANCY, AND TITLE IX

NCAA Guidance

- A pregnant student-athlete's physician should make medical decisions regarding sport participation
- A student-athlete with a pregnancy-related condition must be provided with the same types of modifications provided to other student-athletes to allow continued team participation
- Pregnant student-athletes cannot be harassed due to pregnancy
- A student-athlete whose athletic career is interrupted due to a pregnancy-related condition will typically be entitled to a waiver to extend their athletic career

[Source: NCAA, Pregnant and Parenting Student-Athletes](#)



CASE STUDY

- Siri

CASE STUDY: SIRI

- Siri, a nursing student, is in her third trimester of pregnancy and her final year of nursing school. Siri is completing her clinical hours with the university-affiliated medical school when the Director of the medical school, who also oversees nursing students, phones you to inform you that Siri will need to stop participating in her clinical experience until after she gives birth.
- The Director explains that Siri will have to lift patients, stand for long hours, and oftentimes miss a meal during a shift--all of which pose risks to her and her unborn baby and put the medical school and the program at liability risk.

CASE STUDY DISCUSSION: SIRI

- Siri is furious with this decision and explains that she is perfectly able to complete her clinical hours if given the appropriate accommodations, which she adds, is her right. Siri also explains that she wants to graduate with her cohort, and she already has a nursing job ready for her when she graduates and passes the licensure exam.
- Siri also shares that by delaying her completion of the program, her VISA may be in jeopardy of being cancelled.
- The Director is adamant that Siri is a liability and refuses to schedule or sign off on any hours for Siri until post-pregnancy.

What are your recommendations?

SPECIAL TOPICS

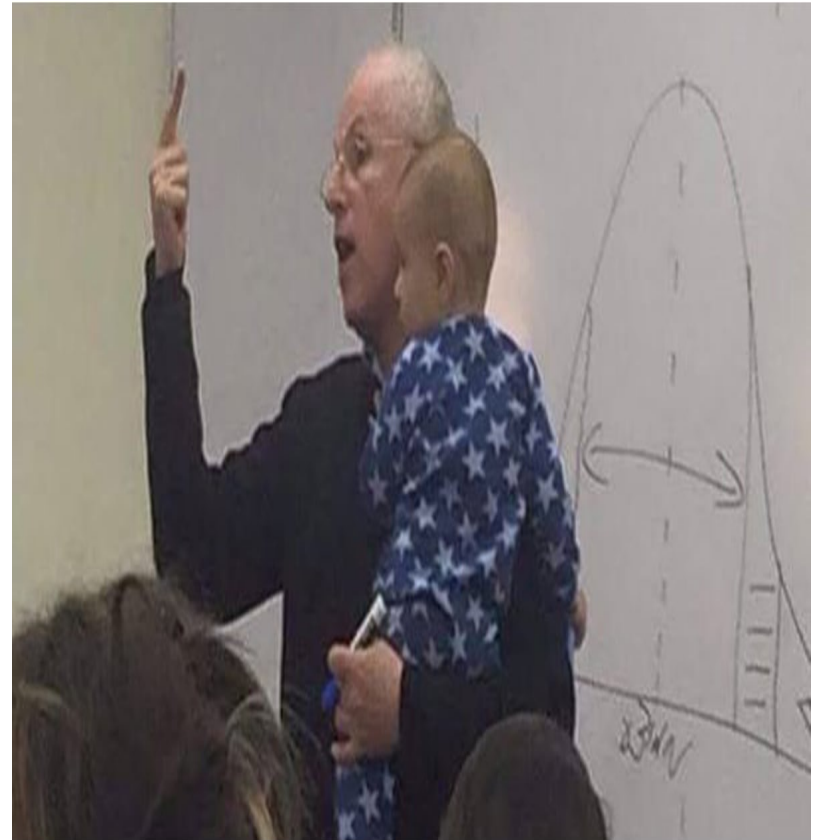
- Nursing rooms, mothers' lounges, etc.
- Children in the classroom
- Residence halls
- Labs, chemicals, exposure to diseases, etc.
- Cohort programs
- Licensure requirements
- Online learning/homebound instruction
- Childcare

NURSING ROOMS, MOTHERS' LOUNGES, ETC.

- Not required under Title IX
- However, having a dedicated space will contribute to a more inclusive campus/school environment for students, employees, and guests
 - Idea: If you have a women's resource center, create a private space by placing a privacy barrier for nursing mothers
 - Idea: Rotate usage of additional spaces
 - Idea: Rent a lactation pod/suite and place in a heavy traffic building for easy access

CHILDREN IN THE CLASSROOM

- Not required
- Not encouraged
- Think of equal access to education more broadly
- Are you potentially impacting other students' ability to learn?
- Not a matter of having a more inclusive campus/school



RESIDENCE HALLS

- Not required to change occupancy policies for any residence hall on your campus
- Upon birth of child, Recipient can move the student to housing more appropriate for parenting students, if applicable
 - Not required to pay for housing of parenting student if institution does not offer family housing
- Pregnant students are required to have equal access to housing and cannot be discriminated against, regarding housing, during their pregnancy
 - Example: A student with a roommate becomes pregnant. Pregnant student develops morning sickness, which causes her to vomit often. The roommate wants the school to move the pregnant student to another room because of the vomit.

LABS, CHEMICALS, EXPOSURE TO DISEASE, ETC.

- Reasonable restrictions for health and safety (as determined by a physician) are permitted
- No one at the institution/school is permitted to make this decision on behalf of pregnant student
- Cannot force a pregnant student to restrict themselves from the class, lab, or exposure. Can recommend, but not force.
- Cannot impose penalties for a pregnant student who decides to restrict themselves
- Cannot require a doctor's note from pregnant student, if it is not required for other students

COHORT PROGRAMS & LICENSURE REQUIREMENTS

- Recipient is obligated to accommodate pregnant students
- Can recommend, but cannot force a student to change academic courses or programs
- Students should still be held accountable for coursework completion and standards regardless of pregnancy
- Provide options to pregnant students and allow them to make the decision of which path they take
- There are always options to accommodate pregnant and parenting students while still adhering to licensure requirements. May require thinking outside of the box.



CASE STUDY

- Sasha

CASE STUDY: SASHA

- Sasha is a sophomore theatre major and just found out she is pregnant. Sasha is having a very rough first trimester and is having to miss a lot of rehearsal time for a play in which she was recently cast as the lead role.
- Professor Alexa, Sasha's Acting II instructor and the director of the production Sasha is in, has a very strict attendance policy when it comes to missing rehearsals.
- Professor Alexa's policy is, if a student misses more than two rehearsals, they are removed from their role. Sasha has now missed her third rehearsal and is removed from the lead role and the play altogether.

CASE STUDY: SASHA

- Sasha is mad that she has been removed from the cast of the show and reports to you that she is being discriminated against based upon her sex and pregnancy status.
- Professor Alexa states that Sasha's removal has nothing to do with her sex or pregnancy status and has everything to do with the attendance policy which is applied equally to all students in productions.
- Furthermore, according to the national theatre accrediting body, each production must include a minimum of twenty rehearsal hours for each actor prior to the first full dress rehearsal in order for the play to be considered of educational quality, and for it to count towards the student's degree requirements.

CASE STUDY DISCUSSION: SASHA

- Rehearsals take place one day per week for six hours each session. Missing one rehearsal is the equivalent of missing three weeks of course material.
- Sasha's three absences have significantly impacted the others involved in the productions, including other students not having the ability to rehearse scenes with her, which has in turn decreased their total number of rehearsal hours.
- Sasha tells you that she has been rehearsing during the weekends with her scene partners and knows her lines despite missing the three class periods.

What do you do as Title IX Coordinator?

ONLINE LEARNING & HOMEBOUND INSTRUCTION

- If this is a service offered to other students with temporary medical conditions, it should be offered to pregnant and parenting students
- More common following the pandemic
- All other accommodations should still apply, if applicable
- Cannot force student into this option but can recommend
- May be appropriate to offer to other parent if this falls under Recipient's leave policy

CHILDCARE

- Childcare is not considered “medically necessary” under Title IX
- Students can still be held to regular standards set forth for all students (i.e., attendance)
- If teachers/faculty provide latitude for parenting students as it relates to childcare, they must provide latitude for all other students as well
- Important for teachers/faculty to set the tone early
- Be consistent



SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION

- Terminology
- Recent Case Law and Guidance
- Common Concerns and Current Challenges
- Pronouns and Chosen Name
- Athletics
- Restrooms and Locker Rooms
- Housing

TERMINOLOGY

- **Sex:** References chromosomes, hormones, reproductive organs, and genitalia
- **Gender:** Refers to the attitudes, feelings, and behaviors that a given culture associates with biological sex
- **Gender Identity:** Internal sense of gender
- **Gender Expression:** Outward expression of gender, often through clothing, behavior, posture, mannerisms, speech patterns, and activities
- **Sexual Orientation:** Attracted to sexually or romantically, on a continuum (e.g., gay, lesbian, bisexual, heterosexual, asexual, and pansexual)

TERMINOLOGY (CONT.)

- **Queer:** Denoting or relating to a sexual or gender identity that does not correspond to established ideas of sexuality and gender, especially heterosexual norms
- **Cisgender:** Gender identity is consistent with the sex assigned at birth
- **Transgender:** Denoting or relating to a person whose sense of personal identity and gender does not correspond with their birth sex.
- **Gender-Variant/Diverse:** Denoting or relating to a person whose behavior or appearance varies or is diverse from prevailing cultural and social expectations about what is appropriate for their gender

TERMINOLOGY (CONT.)

- **Gender Fluid:** Denoting or relating to a person who does not identify themselves as having a fixed gender
- **Nonbinary:** A term used to describe individuals who may experience a gender identity that is neither exclusively woman or man or is in between or beyond both genders
- **Intersex:** Born with genitalia, reproductive systems, and/or sex chromosomes of both males and females
- **Heterosexual:** Attracted to people of a gender other than their own
- **Asexual:** Minimal or no sexual attraction to others
- **Bisexual:** Attracted to people of the same as well as other genders
- **Pansexual:** Attracted to people regardless of gender

TERMINOLOGY (CONT.)

What does it mean to “transition?”

- Social
- Medical
- Legal

RECENT CASE LAW AND GUIDANCE

- **2020:** Supreme Court holds that discrimination based on sexual orientation and discrimination based on gender identity inherently involve treating individuals differently because of their sex under Title VII
 - *Bostock v. Clayton County*, 590 U.S. ____ (2020)
- **January 2021:** Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- **March 2021:** Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

RECENT CASE LAW AND GUIDANCE (CONT.)

- **June 2021:** Department of Education issues “Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*”
 - “As numerous courts have recognized, a school’s policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm.”
- **August 2021:** OCR issues Back-to-School Message for America’s Transgender Students
- **October 2021:** OCR issues *Supporting Intersex Students: A Resource for Students, Families, and Educators*

TITLE IX & TRANSGENDER INDIVIDUALS

Common Concerns and Current Challenges

- State-based legislation
- Political changes
- Conflict between Title VII (EEOC) and Title IX (OCR)
- Possible federal legislation
- Discomfort and the claim of reverse discrimination
- Educating institutional communities and constituencies
- Religious concerns
 - Religious schools, club or group membership and/or leadership, sharing of restrooms, etc.
- Resources, services, and programs based on the gender binary (e.g., Homecoming King and Queen, Women's Clinic)
- Athletics

ISSUES AND BEST PRACTICES

- **Name & Pronouns**
 - Education and employment records
 - Databases and record systems
 - Identification documents
 - Classrooms, offices
 - X gender marker on official identification
 - The need to educate our communities
- **Maintaining Privacy**
 - Maintain privacy in relation to gender identity to the extent possible
 - Sex and gender, including transgender status, should not be included as directory information

ISSUES AND BEST PRACTICES

- Where sex-segregated activities and facilities are provided, transgender individuals should be allowed to both **participate** and **access facilities** consistent with their gender identity
- **Restrooms and Locker Rooms**
 - Institutions should not:
 - Require transgender individuals to use facilities inconsistent with their gender identity, nor
 - Require use of individual-user facilities where other students or employees are not made to do so
- Individual-user options can be made available to all students voluntarily seeking additional privacy

DCL ON TRANSGENDER STUDENTS (RESCINDED)

- **Athletics**

- Beware of requirements that rely upon overly broad generalizations or stereotypes
- Discomfort with transgender students
- NCAA, NJCAA, and other organizations have specific policies regarding participation
- OCR has rescinded Trump-era enforcement letters that stated that students should compete according to biological sex

- **Single-Sex Classes**

- Transgender students are to be allowed to participate consistent with their gender identity

DCL ON TRANSGENDER STUDENTS (RESCINDED) (CONT.)

■ **Housing and Overnight Accommodations**

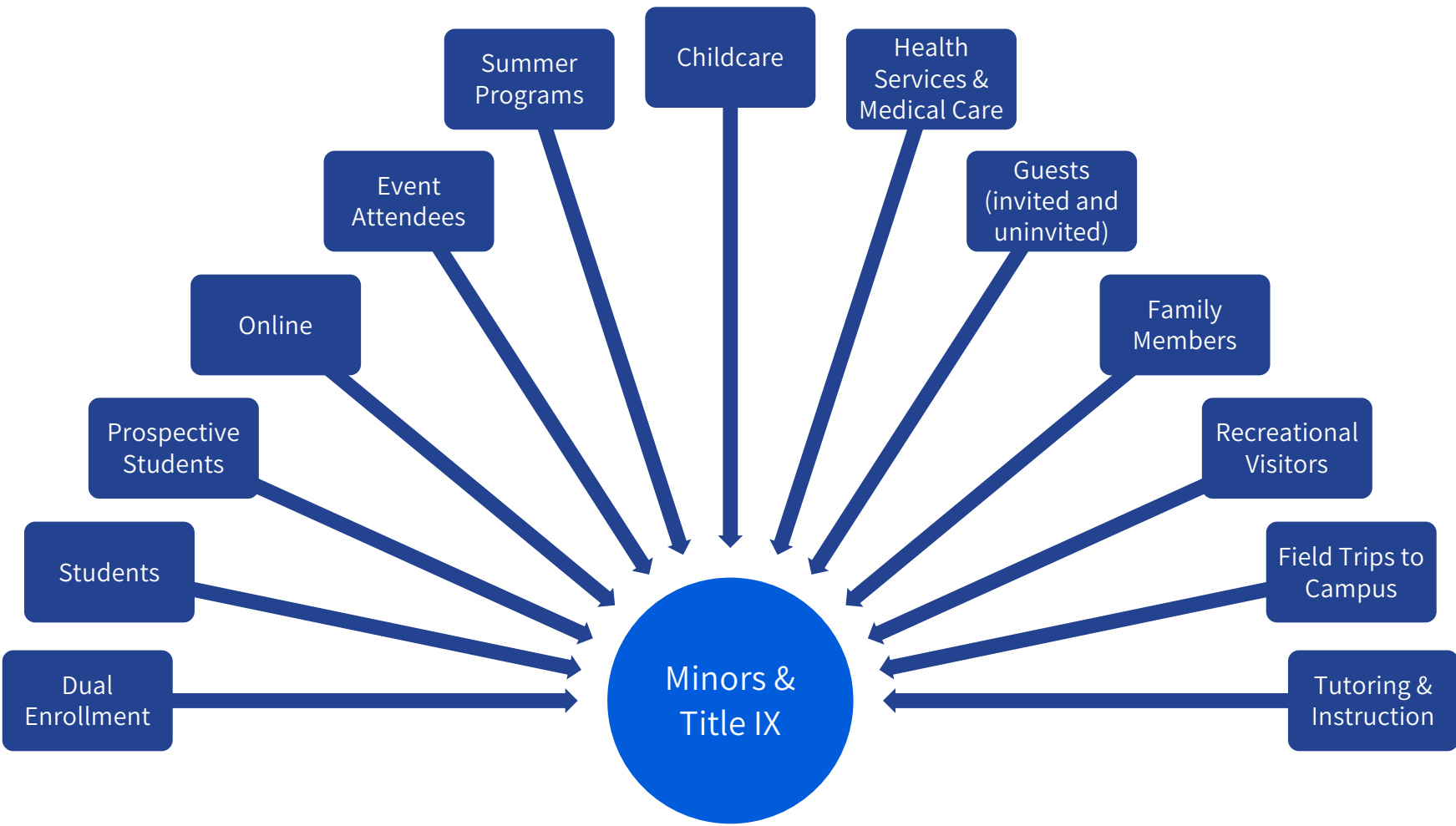
- Institutions must allow transgender students access to housing consistent with their gender identity
- Institutions may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students
- Institutions can choose to honor a student's voluntary request for single-occupancy accommodations
- Same-sex only guest policies may be discriminatory on the basis of sexual orientation
- Consider summer camps, etc.



MINORS & TITLE IX

- Minors on Campus
- Operative Questions
- Sample Policy
- Dual Enrollment
- Abuse Prevention
- More Concerns

MINORS & TITLE IX



MINORS & TITLE IX (CONT.)

- Minors as students
 - K-12: Nearly all elementary and secondary education students
 - Higher Education: Students under the age of 18 may enroll full- or part-time in college. When they do, FERPA rights shift from their parents/guardians to them, and privacy protections attach to their education records.
- When are they your “students?”
 - Dual enrollment?
 - Summer break?
 - K-12 school on college campus?
 - Continuing education?
 - Recruits?
 - On-campus childcare facilities?

MINORS AND TITLE IX: SOME OPERATIVE QUESTIONS

K-12

- Range of ages is of key importance
- Whose student are they between elementary, middle, and high school?
- Who is responsible for them?
- Who is training those responsible?
 - Mandatory reporting
 - Parental/guardian notification
 - Age of consent laws

MINORS AND TITLE IX: SOME OPERATIVE QUESTIONS

Higher Education

- How many minors are on your campus each day?
- Who knows they are there?
- Who knows where they are?
- Who is responsible for them?
- Who is training those responsible?
 - Reporting/referring
 - BIT/Title IX/Clery
 - Parental/guardian notification
 - Age of consent laws

DUAL ENROLLMENT STUDENTS

- Effective coordination between the Title IX Coordinator at the college/university AND the District Title IX Coordinator
 - What support measures are needed in each setting (if any)?
 - Who has jurisdiction?
 - Personal jurisdiction
 - Covered programs
 - Geographic jurisdiction
 - Subject matter jurisdiction
 - Who should investigate?
 - Any mandated state reporting required?
 - Note: Higher Ed- FERPA rights belong to the student

MINORS & TITLE IX: CAMPS AND OTHER PROGRAMS



Not Ours

- Run by a different entity
- They hire the staff
- We only rent them space



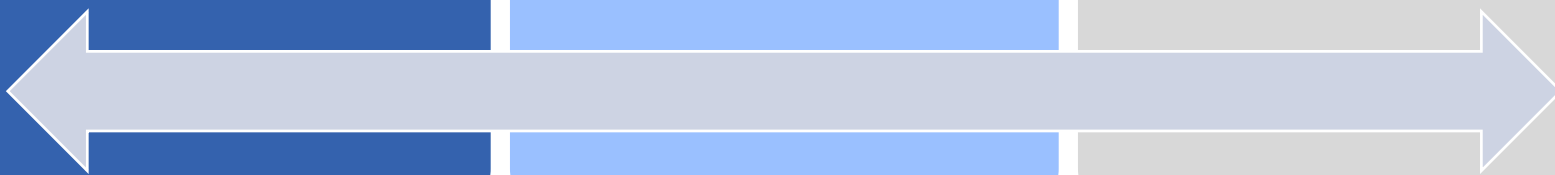
Kind of Ours

- The money comes through a shell or through the school
- The employees are our students or temporary hires
- May have our name on it – kind of



Completely Ours

- The money comes into the school
- The staff are our employees
- It has our name on it



MINORS & TITLE IX

Additional policy considerations:

- Classifying minors – see state law
- Who has access to minors?
 - Employees
 - Students
 - Quasi-employees
 - Volunteers
 - Other minors' parents/guardians
 - Guests

MINORS & TITLE IX

Additional policy considerations (Cont.):

- Facility usage policies
 - E.g.: Gyms, cafeteria, recreation center, overnight visitation, conference facilities, athletic facilities, event facilities, corridors and classrooms during evening/weekend events (K-12), etc.
- Communication and interaction with parents/guardians
- Communication and interaction with minors – who will have it?

MINORS & TITLE IX: SAMPLE POLICY

Abuse involving minors – model policy language (higher education):

- In addition to having students who are minors enrolled, [Recipient] hosts minors as guests and as campers. [State] law narrowly imposes duties on mental health professionals, counselors, clergy, and law enforcement to report certain crimes involving minors, and abuse, to appropriate officials. [Recipient]’s protocol is that **all employees will report all suspected child abuse, sexual abuse of minors, and criminal acts by minors to [the Security Office] without delay.** Clergy Act reporting of offenses for statistical purposes occurs whether victims are minors or adults.

MINORS & TITLE IX: ABUSE PREVENTION

Prevention and detection – sexual abuse of minors:

- Policies
- Screening and selection
- Training
- Monitoring and supervision
- Consumer participation – educate parents and guardians
- Reporting systems and mechanisms
- Response – prompt, effective, and compliant with laws
- Administrative practices

MINORS & TITLE IX: MORE CONCERNS

Additional considerations:

- Inadequate supervision
- Alcohol and controlled substances
- Unplanned time
- Restrooms, locker rooms, and residential facilities



INTRODUCTION TO TITLE IX AND ATHLETICS

- Overview of Title IX Requirements
- Oversight of Athletics

TITLE IX REQUIREMENTS & OVERSIGHT FOR ATHLETICS

- Title IX compliance requirements:
 - Effective accommodation of interests and abilities
 - Financial assistance proportionality
 - Treatment of student-athletes
- **Compliance** may be delegated to the Senior Woman Administrator (SWA) or a compliance officer in athletics
- Compliance oversight remains the responsibility of the Title IX Coordinator
 - Need for outside education
- The dangers of being both

TITLE IX APPLICATION TO ATHLETICS

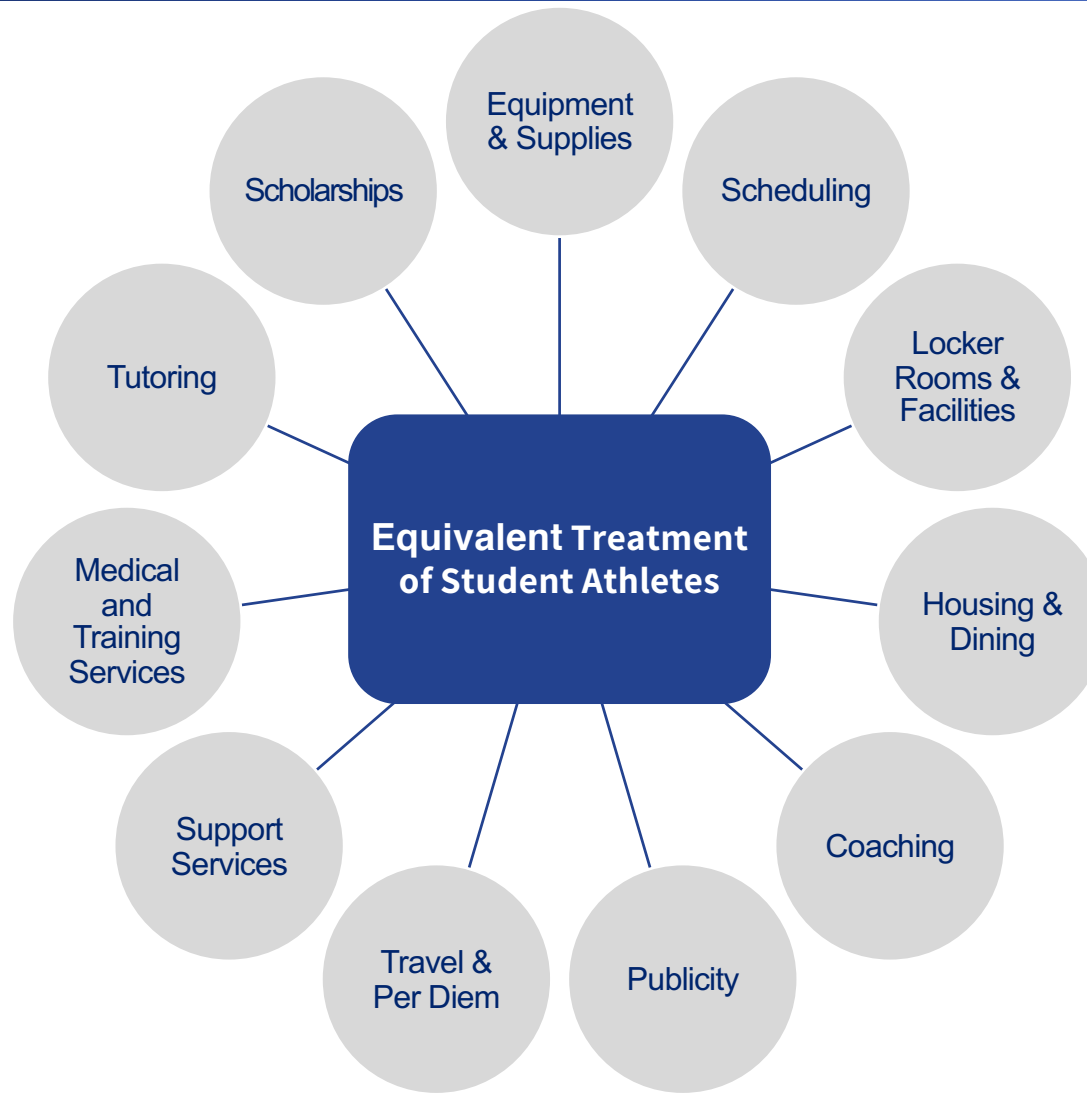
- Title IX applies to:
 - Intercollegiate athletics
 - Interscholastic athletics
 - Intramurals
 - Club teams/sports
 - eSports
- The Three-Part Test and the 13 program components are typically not as problematic for Intramurals and Clubs because those programs are typically participant-initiated and benefits provided by the institution are far fewer

OVERSIGHT OF ATHLETICS GENDER EQUITY: THREE-PART TEST

Effective accommodation of interests and abilities:

- **Part 1:** Opportunities for males and females substantially proportionate to their respective enrollments; OR
- **Part 2:** Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR
- **Part 3:** Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program

OVERSIGHT OF ATHLETICS GENDER EQUITY





INTRODUCTION TO SECTION 504 AND THE ADA

- Legal Landscape Overview
- Scope of Covered Programs

LEGAL LANDSCAPE OVERVIEW

- **Section 504 of the Rehabilitation Act**
 - Prohibits discrimination on the basis of disability in all programs or activities that receive federal financial assistance
 - Enforced by the U.S. Dept. of Education, Office for Civil Rights
- **Fair Housing Act (FHA)**
 - FHA applies to residential “dwellings”
 - Enforced by the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity

LEGAL LANDSCAPE OVERVIEW (CONT.)

- **Americans with Disabilities Act (ADA)**
 - Prohibits discrimination on the basis of disability by public entities (Title II) and private education facilities and in the activity of places of public accommodation (Title III)
 - Enforced by the Department of Justice
 - ED's OCR has some responsibilities for Title II
- State Laws

SCOPE OF COVERED PROGRAMS

- All institutional operations, programs, and activities are subject to Section 504 requirements, including:
 - Academics
 - Athletics
 - Employment
 - Housing
 - Events
 - Web-based educational services

KEY TAKEAWAYS

- All individuals with a qualifying disability must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others
- Institutions may provide a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit or service is as effective as others

CONNECTION TIX & DISABILITY

- Prevalent with pregnant and parenting student accommodations
- Sex-based disability discrimination
- Disparate impact related to treatment and accommodations
- U.S. Dept. of Education, Office for Civil Rights enforcement
- Ensure accommodations are made in Title IX process, including coordinating with Disability Services when necessary



CLERY ACT/VIOLENCE AGAINST WOMEN ACT (VAWA)

- VAWA History
- VAWA Impact
- Campus SaVE Act (2013 changes to Clery Act)

VAWA HISTORY

- Originally passed in 1994
 - Reauthorized & amended 2000, 2005, 2013
- Reauthorization in 2000 as part of the Victims of Trafficking and Violence Protection Act
 - Funded new programs, particularly grants
 - Added dating violence to the purpose areas of several VAWA grants
 - Encouraged enforcement of protection orders
 - Authorized funding for sexual assault forensic medical personnel examiners
 - Expanded interstate stalking laws

VAWA HISTORY (CONT.)

- 2013 Reauthorization included significant amendments to the Clery Act:
 - Section 303: Grants to combat violent crime on campuses
 - Section 304: Campus Sexual Violence Elimination Act, or “Campus SaVE”
 - Substantially amended the Clery Act
 - Codified some aspects of the April 4, 2011 Department of Education’s Dear Colleague Letter (DCL) – **DCL Now Rescinded**

OVERALL VAWA IMPACT

- Increased reporting of domestic violence, dating violence, sexual assault, and stalking
- Decreased rate of both fatal and non-fatal intimate partner violence
- Created net savings to taxpayers by averting other negative social costs
 - See e.g.: OVW 2010 Biennial Report to Congress on Effectiveness of Grant Programs Under VAWA:
<http://www.ovw.usdoj.gov/docs/2010-biennial-report-to-congress.pdf>

CLERY/VAWA COMPONENTS

- Educate students, faculty, and staff on the prevention of sexual assault, domestic violence, dating violence, and stalking
- Intersects with Title IX and Clery requirements and obligations
- Institutional disciplinary procedures shall “provide a **prompt, fair and impartial** investigation and resolution.”
- Added significant requirements to the content of the Annual Security Report (ASR)
 - E.g.: Victim services & remedies, policy definitions

CLERY/VAWA COMPONENTS (CONT.)

- Institutional policies and responses in addressing:
 - Domestic violence, Dating violence, Sexual assault, Stalking
- Prohibits retaliation
- Substantial training requirements



THE CLERY ACT AND ANNUAL SECURITY REPORTING

- Annual Security Report Requirements
- Timely Warnings & Emergency Notifications
- Training, Policy, and Procedure Requirements

THE CLERY ACT

- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f))
 - Jeanne Clery was raped and murdered in her residence hall room at Lehigh University – prompted legislation
 - Originally passed in 1990 as the “Student Right-to-Know and Campus Security Act”
 - Amended in 1992, 1998, 2008 by Higher Education Act reauthorization
 - Amended in 2013 by VAWA Reauthorization

CLERY ACT: ANNUAL SECURITY REPORT

- October 2020: 2016 Handbook for Campus Safety and Security Reporting was rescinded and replaced with the Clery Act Appendix for the FSA Handbook guidance; updated again on January 19, 2021
 - Clery Geography: Three categories of locations subject to reporting: on-campus; non-campus building or property; public property
 - Three categories are defined by 34 CFR 668.46(a)
 - Note: Clery geography and Title IX jurisdiction are separate and overlapping

CLERY ACT: ANNUAL SECURITY REPORT (ASR)

Reports of Clery Crimes:

- Criminal Homicide
- Robbery
- Burglary
- Arson
- Aggravated Assault
- Motor Vehicle Theft
- Liquor Law Violations
- Drug Law Violations
- Illegal Weapons Possession
- Rape/Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking
- Fondling
- Incest
- Statutory Rape
- All Hate Crimes

CLERY ACT: ANNUAL SECURITY REPORT REQUIRED CONTENT

Policies

- Regarding alcoholic beverages and underage drinking
- Regarding illegal drugs and applicable state and federal laws
- Missing student notifications
- Procedures for reporting criminal actions or other campus emergencies
- Security of and access to campus facilities
- Enforcement authority of security personnel

Programs

- Substance abuse
- **DV/DV, SA, and stalking prevention**
- Campus security procedures and practices

Other

- **Sex offender information**
- Emergency response and evacuation procedures
- **Campus crime statistics**
- **Procedures institutions will follow when DV/DV, SA, or stalking is reported**

ANNUAL SECURITY REPORT: HATE CRIME CATEGORIES

Categories of prejudice – actual or perceived:

- Race
- Gender
- Religion
- Sexual orientation
- National origin
- Gender identity
- Ethnicity
- Disability

POLICIES & PROCEDURES: COMPLAINANT SERVICES

- VAWA identifies requirements for institutions to provide information and services to Complainants that overlap with and add to the supportive measure requirements under Title IX

Policy statements in the ASR must include:

- Procedures Complainants should follow if domestic violence, dating violence, sexual assault or stalking occur, including information in writing regarding:
 - The importance of preserving evidence to prove a crime or obtain a protective order
 - To whom such incidents should be reported
 - That, if the Complainant wishes, campus authorities may assist the Complainant in notifying police

POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include (Cont.):

- Victim's options to notify (may also decline to notify)*
 - Law enforcement (campus and local)
 - Campus authorities
- Written notification to students and employees about existing services for:
 - Counseling
 - Health
 - Mental health
 - Victim advocacy
 - Legal assistance
 - Other services available for victims
 - Both on campus and in the community

*Some states require law enforcement reporting if the institution is aware of an incident of sexual assault

POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include (Cont.):

- Written notification to victims about options for, and available assistance in, changing (at victim's request):
 - Academic enrollment or class schedule
 - Living arrangements (on campus)
 - Transportation access
 - Working situations
- If reasonably available and irrespective of whether the Complainant chooses to report to campus or local law enforcement

POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include:

- Rights of Complainants and institutional responsibilities regarding protective measures issued by a criminal or tribal court, including:
 - Orders of protection
 - No contact orders
 - Restraining orders
 - Similar lawful orders

POLICIES & PROCEDURES: STANDARD OF EVIDENCE

- ASR must include a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from a report of domestic violence, dating violence, sexual assault, or stalking
 - VAWA does not require a particular standard
- Title IX regulations allow for the choice of using preponderance of the evidence or clear and convincing evidence
 - ATIXA recommends the preponderance standard as it is the most equitable standard
- Whichever standard is used for students, must be used for employees and across all sexual harassment resolution processes

POLICIES & PROCEDURES: PROMPT, FAIR, AND IMPARTIAL

- Institutional disciplinary procedures shall “provide a prompt, fair and impartial investigation and resolution.”
 - Complainant and Respondent are entitled to the **same opportunities** to have a support person/Advisor of their choice at **any** proceeding or related meetings.
 - The Complainant and Respondent must be simultaneously informed in writing of:
 - The outcome that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking
 - The institution’s procedures for appeal

POLICIES & PROCEDURES: PROMPT, FAIR, AND IMPARTIAL (CONT.)

- The Complainant and Respondent must be simultaneously informed in writing of (Cont.):
 - Any change to the results that occur prior to the time that such results become final
 - When such results become final
- If the institution addresses sexual assault, dating and domestic violence, and stalking under more than one policy or process, the Title IX formal grievance process and any other policy or process(es) must be VAWA compliant

POLICIES & PROCEDURES: CONFIDENTIALITY

Policy statements in the ASR must include:

- Information about how the Complainants' confidentiality will be protected, including how publicly available recordkeeping will be accomplished without including identifying information about the Complainant, to the extent permissible by law
 - Timely warnings must withhold the names of Complainants as confidential

POLICIES & PROCEDURES: SANCTIONS AND PROTECTIVE MEASURES

Policy statements in the ASR must include:

- Possible sanctions or protective measures that [an] institution may impose following a final determination of an institutional disciplinary procedure regarding:
 - Domestic violence
 - Dating violence
 - Sexual assault
 - Stalking

TIMELY WARNINGS AND EMERGENCY NOTIFICATIONS

	Emergency Notifications	Timely Warnings
Scope	Significant emergency or dangerous situation	Clery crimes reported to CSAs
Triggered by?	Event that is currently occurring on or imminently threatening campus	Crimes that occurred and represent an ongoing threat
Where event occurs?	Only on campus	Anywhere on Clery geography
How soon to issue?	Immediately upon confirmation of situation	As soon as information is available

VAWA 2013: ANNUAL TRAINING REQUIREMENTS

- Annual training of officials involved in investigating and/or resolving complaints:
 - **The four types of cases:** Domestic violence, Dating violence, Sexual assault, and Stalking
 - **How to conduct an investigation** “that protects the safety of victims and promotes accountability.”
 - **How to conduct a “hearing process** that protects the safety of victims and promotes accountability.”
 - Important to follow Title IX regulations with respect to training topics
 - Make sure training materials are neutral



PROGRAMMING & PREVENTION EFFORTS

- VAWA Educational Programs & Campaigns
- Prevention Education & Training Checklist
- Risk Reduction

VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Programs should be tailored to each institution and its constituents and be:
 - Culturally relevant
 - Inclusive of diverse communities and identities
 - Sustainable
 - Responsive to community needs
 - Informed by research or assessed for value, effectiveness, or outcome (i.e., research conducted according to scientific standards and efficacy assessments performed by institutions and organizations)
 - Consider environmental risk and protective factors as they occur in the individual, relationship, institutional, community, and societal levels

VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Must be directed at **all incoming students** and **new employees**
 - No requirement that all take or attend, but an attendance mandate is encouraged
 - Institutions **must** make a “good-faith effort” to reach all incoming students and all new employees
 - Requires “active notification of the training’s availability and providing the training in a format and timeframe that encourages and allows for maximum participation.” (34 C.F.R. § 668.46)
 - Means of delivery (in-person, theatrical, online videos, online interactive) can vary depending “on the circumstances of your community.” (34 C.F.R. § 668.46)

VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Programming should include a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking as those terms are defined by the Title IX regulations.
- Institutional policies must mirror Title IX (34 C.F.R. §106.30) regulatory definitions, which include the definitions of:
 - Dating violence, domestic violence, sexual assault, and stalking
 - Consent in reference to sexual activity
 - Should also state institutional definition of consent and how it is applied

TITLE IX/VAWA SEC. 304 PREVENTION EDUCATION & TRAINING CHECKLIST

Trainee Populations:

- Title IX Team Members
 - TIX Coordinator and Deputies, Investigators, Decision-Makers, Advisors, and Informal Resolution Facilitators
- First Responders
 - RAs, health center employees, counselors, academic advisors, victim advocates, and public safety/police
- Officials With Authority (OWAs) and Responsible Employees/Mandatory Reporters
- All Faculty & Staff
- All Students

RISK REDUCTION

- Programming should include “information on risk reduction.” (34 C.F.R. § 668.46)
 - Defined as options designed to:
 - Decrease perpetrations and bystander inactions
 - Increase empowerment for victims in order to promote safety
 - Help individuals and communities address conditions that facilitate violence

Note: Information about risk reduction must not be presented in a manner that encourages victim blaming



SANCTIONING

- Regulatory Requirements
- Sanctioning Considerations
- Sanctioning Pitfalls
- Sanctioning Exercise

SANCTIONING IN TITLE IX CASES

- **Duty is to act reasonably when striving to:**
 - Bring an end to the discriminatory conduct (**Stop**)
 - Take steps reasonably calculated to prevent the future reoccurrence of the discriminatory conduct (**Prevent**)
 - Restore the Complainant as best you can to their pre-deprivation status (**Remedy**)
- May clash with the typically educational and developmental sanctions of student conduct processes
- Sanctions for serious sexual misconduct should not be developmental as their primary purpose; they are intended to protect the Complainant and the community

DISCIPLINARY SANCTIONS: REGULATORY REQUIREMENTS

- Grievance process must “describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the Recipient may implement following any determination of responsibility” (34 C.F.R. § 106.45)
- Recipients must follow a “grievance process that complies with Section 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures” (34 C.F.R. § 108.0(c))
- Disciplinary sanctions alone are often insufficient because the Recipient must also provide the Complainant with appropriate remedies designed to restore or preserve equal educational access

DISCIPLINARY SANCTIONS: REGULATORY REQUIREMENTS (CONT.)

- Disciplinary sanctions are not required under Title IX
 - The obligation is to remedy in a manner that is not clearly unreasonable
 - Sanctions can be one form of remedy
 - Disciplinary sanctions – both their form and substance – are at the discretion of the institution (i.e., the OCR will not second-guess the sanctions)
 - Provides flexibility based on the nature and severity of the behavior, the parties, and the context of the behavior, as well.
- Institution must inform the Complainant and the Respondent of any and all sanctions imposed on the Respondent; this includes employee discipline

SANCTIONING CONSIDERATIONS

The sanction must be reasonable and reflect the severity of the behavior

- May consider:
 - prior misconduct
 - precedent
 - attitude
 - collateral and/or multiple violations
- Should be educational, but safety is primary consideration
- What best compensates for loss or injury to school or persons?
- Compliant with laws and regulations (e.g., Title IX)
- Should consider the educational impact on the Complainant and Respondent

SANCTIONING IN SEXUAL HARASSMENT CASES

- Investigation alone is not sufficient to overcome a deliberate indifference claim. Must also remedy if the Respondent is found in violation.
- Should be a nexus between the sanctions and the discriminatory conduct which led to the sanction(s)
- What is appropriate?
 - Separation/expulsion
 - Suspension
 - Lesser sanctions
- Engage in strategic education and training requirements
- Conduct a risk assessment and mitigation process

CONSIDERATIONS POST-FINDING

- Ensure remedies are not clearly unreasonable in light of the known circumstances
- Avoid undue delays
- Take immediate steps to protect Complainants even before the final outcome (e.g., no contact orders)
- Ensure that remedies are equitable
- Consider informal resolution as part of remedial process
- Monitor for retaliation and respond immediately to allegations
- Regularly review policies, procedures, and practices to ensure they are in accordance with best practices, the regulations, and state and federal case law

SANCTIONING PITFALLS

- Conflating finding and sanctioning processes
- Timing of impact statements
- Not targeted to stop, prevent, and remedy
- Unwillingness to suspend, expel, or terminate
- Failure to address mitigating circumstances
- Lock-step or automatic sanctioning – failure to address incident-specific circumstances
- Likeability of parties: + & -
- Disparate sanctions for same behavior
- Others?

SANCTIONING EXERCISE

A staff member continues to make overt and tacit sexual advances towards a colleague, even though the recipient of the behavior has repeatedly told the staff member that the advances are unwelcome

- The advances are verbal, as well as in emails and text messages
- Some of the more subtle advances have been in the company of others
- The Complainant filed a complaint because it is starting to impact their ability to focus at work
- The staff member is found responsible for violating policy

What sanctions do you impose?

SANCTIONING EXERCISE

A tenured faculty member is found responsible for sexual assault involving a student who is not in any of the faculty member's classes

- The Decision-maker determines that the student was incapacitated, and the Respondent should have known of that incapacity
- The Respondent is a full professor holding a prestigious endowed chair position
- The student and the faculty member engaged in consensual sex five times after the sexual assault
- The student brought the allegation shortly after the faculty member began having intercourse with the student's friend

What are your sanctions?



INTRODUCTION TO TRAUMA- INFORMED PRACTICES

WHAT IS TRAUMA?

Exposure to an event or events that creates a real or perceived threat to life, safety, or sense of well being and bodily integrity.

- May result from:
 - War
 - Natural Disasters
 - Sexual Violence
 - Relationship Violence
 - Stalking

TRAUMA-INFORMED PRACTICES

- Trauma-Informed Practices assume that an individual is more likely than not to have a history of trauma.
- On an organizational or systemic level, Trauma-Informed Practices change organizational culture to emphasize respecting and appropriately responding to the effects of trauma at all levels.
- The intention of Trauma-Informed Practice is to provide all persons with support services in a way that is accessible and appropriate to those who may have experienced trauma
 - This is similar to how the Universal Design framework provides all persons with physical spaces and learning systems that are accessible to those who may have a disability

Source: <http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care.html>

TRAUMA-INFORMED PRACTICES

- A Trauma-Informed approach also considers and modifies policies, procedures and treatment strategies from the top-down in order to ensure they are not likely to mirror the common characteristics of traumatic experiences.

Source: <http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care.html>

PRINCIPLES OF TRAUMA-INFORMED PRACTICE

Safety

- Employees and the people they serve feel physically and psychologically safe
- Example: Creating areas that are calm and comfortable

Trustworthiness & Transparency

- Operations and decisions are conducted with transparency and the goal of building and maintaining trust of the institutional community
- Example: Providing clear and consistent information

PRINCIPLES OF TRAUMA-INFORMED PRACTICE (CONT.)

Collaboration & Mutuality

- Institution recognizes everyone has a role to play in the trauma-informed approach
- Example: Including stakeholders in policy decision-making

Empowerment, Voice, & Choice

- Institution recognizes that every person's experience is unique and requires an individualized approach
- Example: Providing an individual options for resolving a complaint

Cultural, Historical, and Gender Issues

- Institution offers culturally responsive services
- Example: Understand the role of beliefs in the interpretation of trauma and the recovery process and provide services for varying beliefs



INTRODUCTION TO CLIMATE ASSESSMENT

- Climate Surveys
- Annual Case Analysis

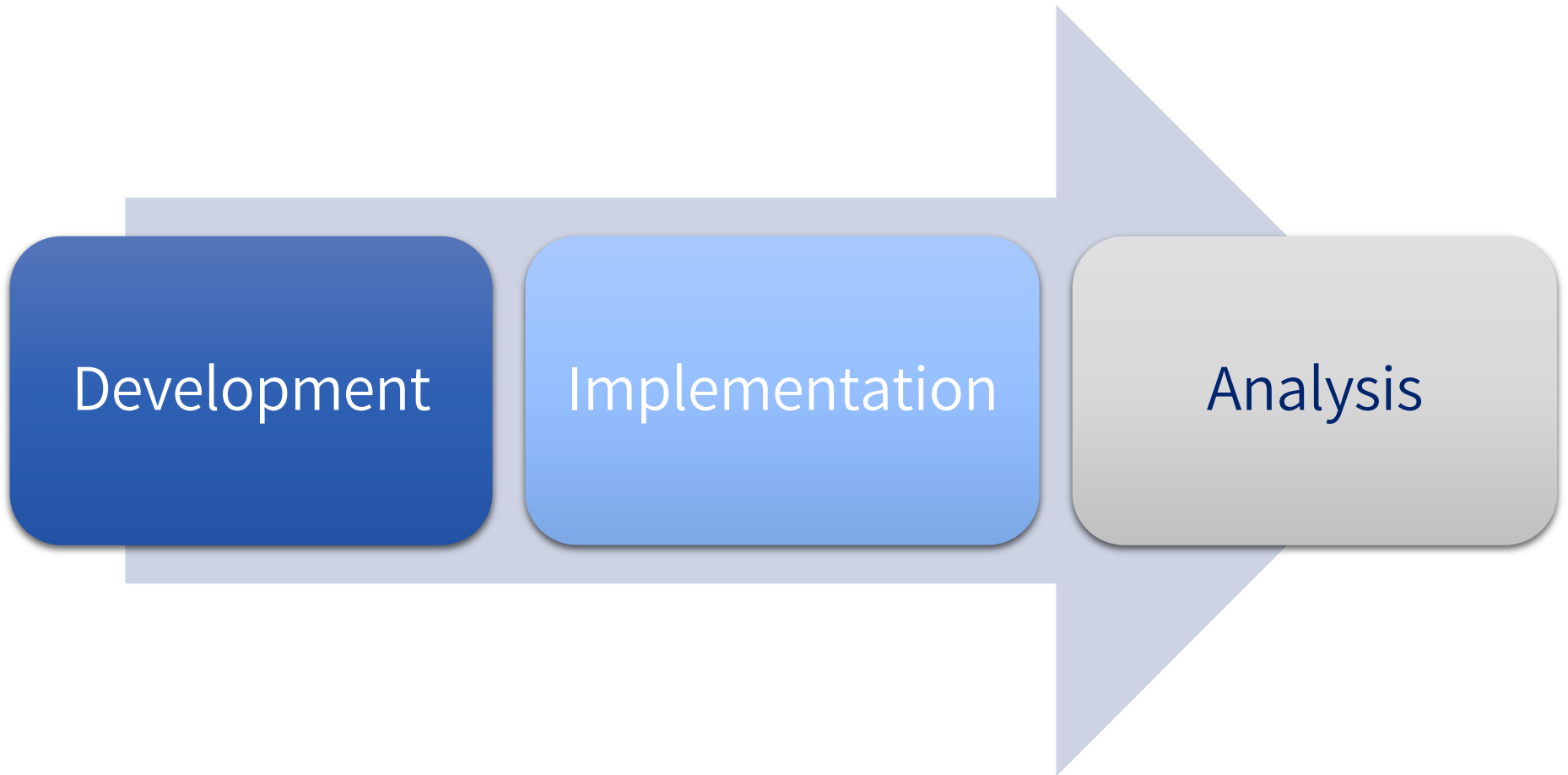
CLIMATE SURVEYS

- Climate surveys provide opportunities to better understand your members of your institutional community's experiences with sexual harassment, sexual assault, stalking, and intimate partner violence
- Surveys typically consist of questions that will take 10–20 minutes for participants to respond to with information regarding their perspective and experiences
- ATIXA suggests shifting away from the temptation of viewing climate surveys as a source of liability for the institution, or an otherwise unpleasant task
- Could be required by state law

CLIMATE SURVEYS (CONT.)

- Climate surveys are something we *get to do*, not something we should fear
- Effective climate surveys shed light on areas of our schools that need improvement. Think of them as a bridge inspection or elevator inspection; they offer critical data so we can improve and ensure safety
- In a perfect world with no funding limitations and an aspirational focus, climate surveys should be offered to three groups: faculty/teachers, staff, and students
- Each survey would have slightly different questions to assess the particular group's experience with sexual harassment, sexual assault, stalking, and IPV

CLIMATE SURVEY STAGES



SURVEY STRUCTURE

- The first step in the development of a climate survey is understanding who you are surveying
 - Demographic questions provide the ability to break down results into hundreds of additional categories and comparisons (if you choose)
 - Demographic questions can't be asked retrospectively.
 - Ensure the survey includes all demographic questions you want to know about those completing the survey before implementation.
 - Consider which statistics are typically requested (e.g., year, gender, gender identity, race, student-athlete status, etc.)

SURVEY STRUCTURE (CONT.)

- Experience and perception questions should make up the bulk of the survey
 - Designed to gain a better understanding of the participants' experiences with sexual harassment, sexual assault, stalking, and intimate partner violence
 - Questions can focus on personal observation, personal experience, and/or general perception
- Questions should clearly differentiate between experiences that occurred while the participant was affiliated with the school and experiences which may have occurred prior to affiliation
- Experience and perception questions are likely to be more open-ended, which will make them harder to analyze but will provide more complete understanding of participants' views

CLIMATE SURVEYS: TOPICS

- ATIXA recommends targeted questions to evaluate how well individuals understand the existing sexual assault, harassment, stalking, and intimate partner violence policy
 - This involves a survey question with an embedded link asking first if the individual is familiar with the policy and then asking them more specifics about the policy being fair to the Respondent, the Complainant, and its application at the school

ANNUAL CASE ANALYSIS



ANNUAL CASE ANALYSIS

- Consistent with data provided for the ASR
- Some systems provide automatic report creation
 - E.g., Maxient, Advocate, etc.
- Can assist in prevention and program planning for new and returning students each year
- Informs of potential problematic behaviors, groups, or physical locations that might need more direct attention
- May indicate bias concerns related to reporting and/or outcomes
- Helps inform where to allocate prevention resources
- Helps with efforts to assess where policies and procedures require modification or clarification

KEY TAKEAWAYS

- Climate surveys, institutional, assessments, and annual case analysis can provide rich data that can:
 - Help improve the student experience
 - Assist Title IX Coordinator in making more informed prevention and programming decisions
 - Provide the Title IX Coordinator with strengths and weakness of their Title IX program
 - Provide solutions to concerns such as low reporting numbers, low program participation, etc.
 - Strengthen the argument for additional resources
 - Allow institution to be more strategic in its approach to compliance



ASSESSING YOUR EXISTING PROGRAM

- Structuring Your Team
- Evaluating Your Team
- Leveraging and Empowering TIXC Authority

STRUCTURING YOUR TEAM

- Title IX Coordinator(s)
- Deputy Coordinator(s)
- Investigator(s)
- Decision-Makers—can be a single Decision-maker or a panel of Decision-makers
 - Policy Violation
 - Appeal
- Informal Resolution Facilitator(s)
- Institution-appointed Advisors (higher education only)

TITLE IX TEAM STRUCTURE: ADDITIONAL CONSIDERATIONS

- Title IX Teams can be as small as five people, but commonly will be more:
 - TIXC + 3-5 deputies (Compliance & Coordination Team)
 - Institutions of Higher Education (Grievance Process Team)
 - 2-4 Investigators
 - 4-5 Decision-makers (panel + alternates)
 - 1-3 Appeal Decision-makers
 - 4-6 trained Advisors
 - **K-12 Schools**
 - 1-2 Investigators per building*
 - 1-2 Decision-makers per building*
 - 1-2 Appeal Decision-makers per building*

*Recommend district-level as well

TIX COORDINATOR: ADVANCED QUESTIONS

CONFLICT OF INTEREST?

- **Title IX regulations** require that any individual designated by a Recipient as a Title IX Coordinator...not have a conflict of interest or bias for or against Complainants or Respondents generally or any individual Complainant or Respondent
 - Can be the Investigator
 - **Cannot** be a Decision-maker
 - **Cannot** be an Appeal Decision-maker
 - Trained in an unbiased fashion
 - Neutrality in title, office location/department, supervisory responsibilities, supervisor
 - Non-partisan (in terms of the grievance process)

THE COORDINATOR: ADVANCED QUESTIONS

DEPUTY COORDINATORS

- Not required by Title IX
 - May be a good practice to designate multiple Deputy Coordinators particularly for larger school districts, colleges, and universities
 - Some Recipients have found that designating a Deputy Title IX Coordinator for each building, school, or campus provides students and staff with more familiarity with the Title IX Coordinator
 - Familiarity may result in more effective training of the school community on their rights and obligations under Title IX and improved reporting of incidents under Title IX

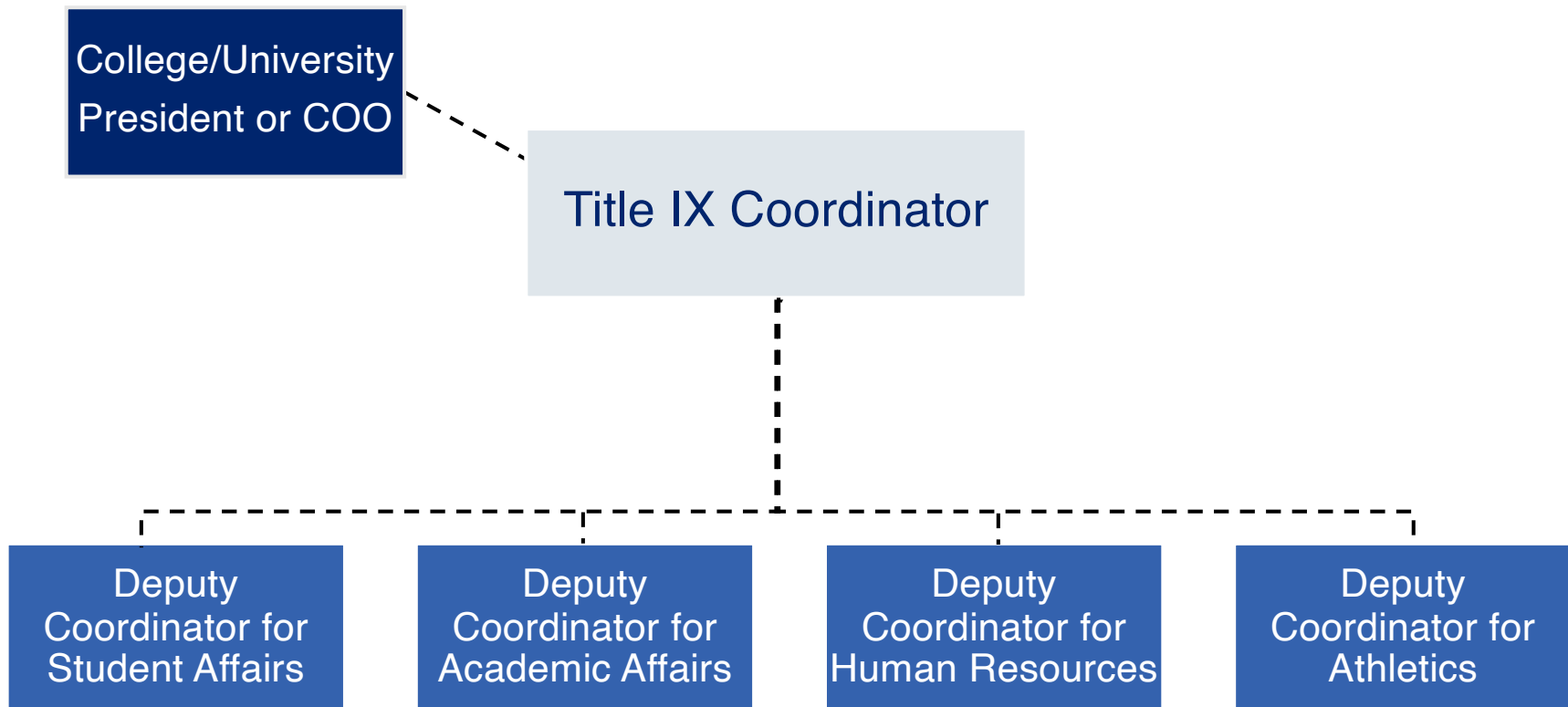
THE COORDINATOR: ADVANCED QUESTIONS DEPUTY COORDINATORS (CONT.)

- A Recipient that designates multiple Deputy Coordinators **should designate one lead Title IX Coordinator who has ultimate oversight responsibility.**
 - Recipient should encourage all of its Deputy Title IX Coordinators to work together to ensure consistent enforcement of its policies and Title IX

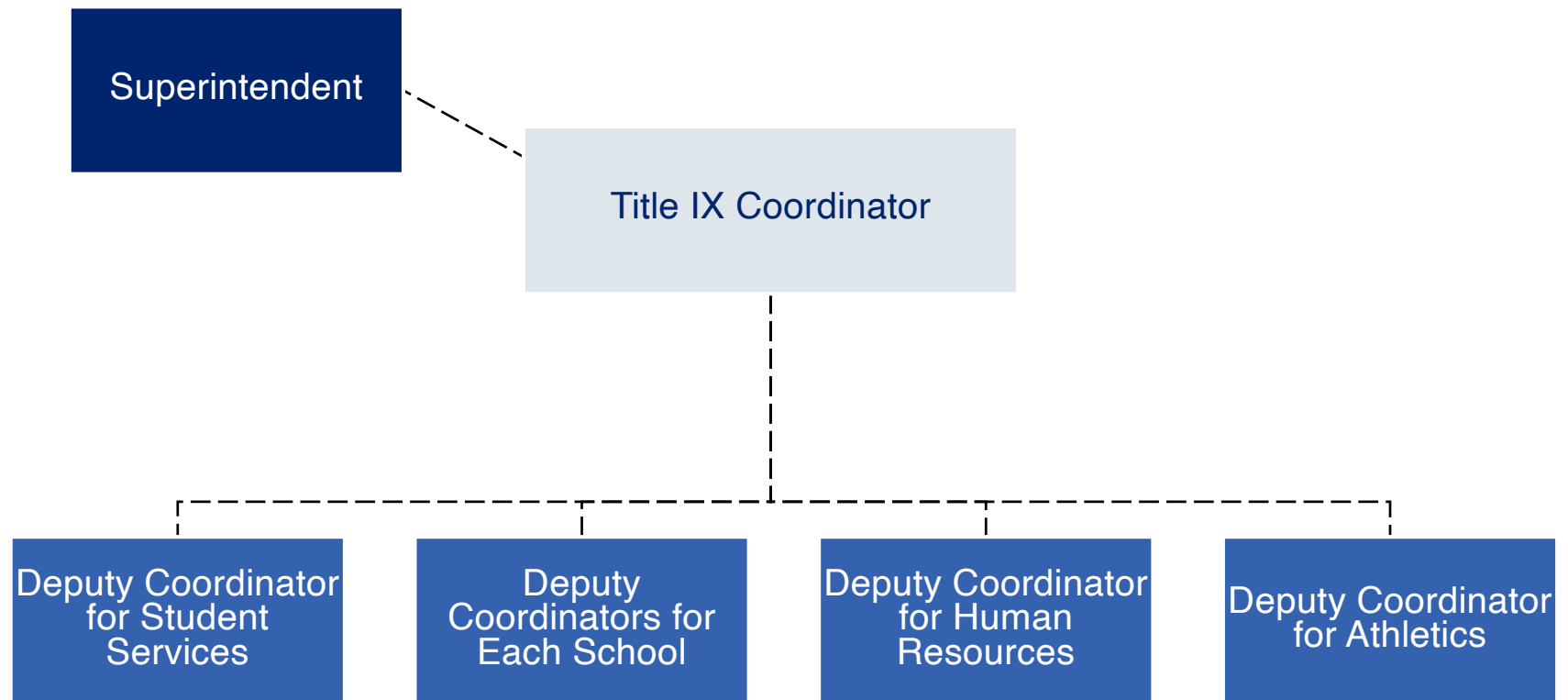
FACTORS TO CONSIDER WHEN STRUCTURING YOUR TEAM

- Individuals' normal work-load and availability
 - Heavy work-load = less availability
 - Consider individuals who have more availability
 - Tenured-track faculty v. tenured faculty
 - Staff
- Inherent conflict of interest or bias
 - Nature of their research and expertise
 - Victim's advocates
- Social media postings
- Primary role at the institution
- Social group memberships
- Volunteer affiliations and organizations

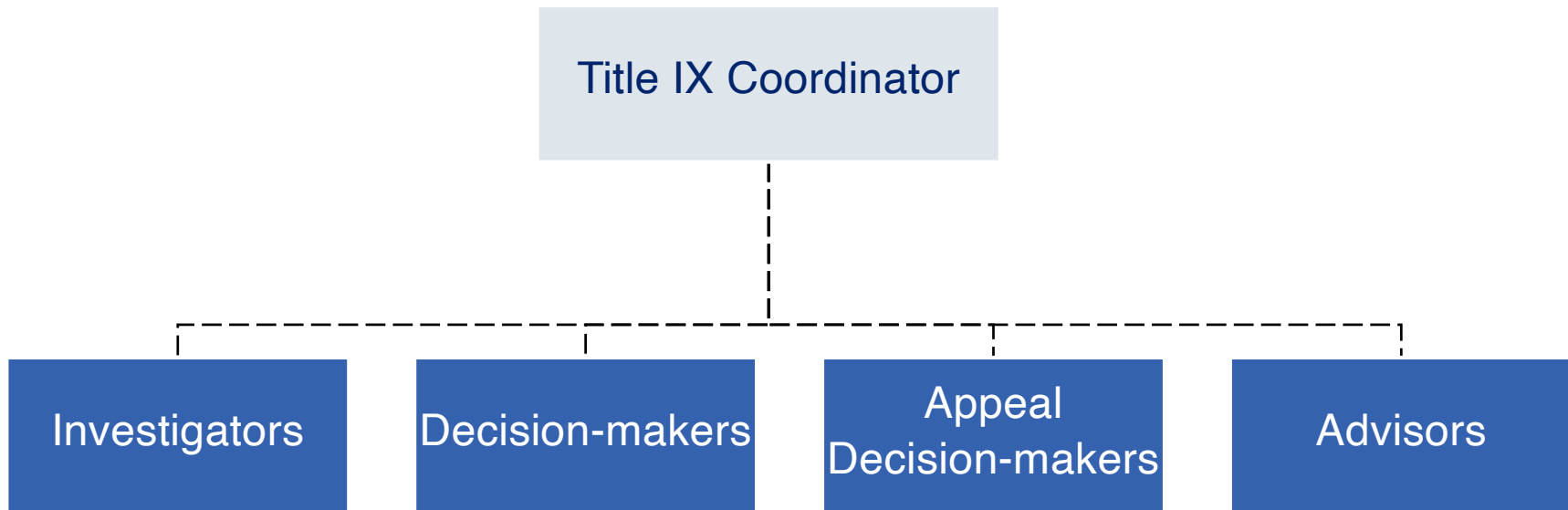
SAMPLE TITLE IX COMPLIANCE TEAM STRUCTURE - HIGHER EDUCATION



SAMPLE TITLE IX COMPLIANCE TEAM STRUCTURE – K-12



SAMPLE TITLE IX GRIEVANCE PROCESS TEAM



TITLE IX TEAM STRUCTURE: ADDITIONAL CONSIDERATIONS

- Job responsibilities of Deputy Coordinators
 - Tailor scope and roles based on culture of Recipient
 - Delegation!
- Multiple campuses/locations
 - Campuses within a larger system (e.g., SUNY schools)
 - K-12 Districts
 - Community College locations
 - Extension campuses
 - Online communities
- Dual-enrollment oversight
- Investigator oversight
- How is your campus/district/school structured?

TITLE IX EXTENDED TEAM

- Include key constituencies not represented on core team
 - General Counsel
 - Public Safety/Campus Police
 - School Resource Officer
 - School Counselors/Counseling Center
 - Residence Life
 - Fraternity and Sorority Life
 - Prevention Services
 - Student Health
 - Others
- Regular meetings and coordination
- Training and programming
- Interaction with behavioral intervention team (BIT)

EVALUATING YOUR TEAM

- Mental health check-ins
- Have they been reliable?
- Have they remained impartial and free from conflicts of interests?
- Confidentiality and privacy:
 - Have you heard “water cooler” chats about cases?
 - Complaints of breaches of privacy
- Have you been able to trust and count on them?
- Have you received allegations against them?
- Have they attended required trainings?

EVALUATING YOUR TEAM (CONT.)

- Do they engage in training or professional development that is not required?
- Are their investigation reports thorough, well-written, and free of biased language and evaluation of information?
- Are their decision rationales complete and appropriate?
- Are they knowledgeable about a variety of intersectional issues that may impact complaint resolution?
- What are other ways to evaluate your Title IX team members?



CASE STUDY

CASE STUDY PART I

- Gianna and Jeremy were both first-year students at Poe College. One night they both attended an on-campus party in a residence hall. Gianna drank two to three cups of wine, two to three shots of tequila, and a mixed drink of Sprite and vodka that contained three shots of vodka, both before the party and within an hour of arriving at the party.
- After leaving the party, Gianna and Jeremy decided to walk back to Gianna's residence hall where they engaged in vaginal sexual intercourse. Midway through the sexual encounter, the condom broke, and Jeremy ceased penetration. Jeremy informed Gianna that the condom broke, told Gianna that he would purchase the morning after pill for her the next morning, and then he left. Gianna was later found on the residence hall bathroom floor by another student and alleged that she was raped.

CASE STUDY PART I (CONT.)

- Gianna framed her original complaint to Poe College as non-consensual sexual intercourse because she alleged Jeremy refused to use a condom. Although she told investigators that she had been drinking heavily and couldn't remember parts of the night, investigators focused solely on her framing of the allegations around consent and disregarded statements and evidence that suggested Gianna's incapacitation.
- First responders found a used condom in Gianna's garbage the night of the incident. When asked about the condom, Gianna stated that she guessed it was from her encounter with Jeremy.

CASE STUDY PART I (CONT.)

- When the investigators submitted their draft report to the Title IX Coordinator (prior to the parties' first 10-day review period), the TIXC noted that the report did not include evidence related to Gianna's alcohol consumption on the night of the reported incident.
- The investigators believed the evidence was not relevant because Gianna alleged a violation on the basis of non-consensual sexual intercourse related to condom use.

Questions:

- What is your evaluation of the relevance of the evidence related to alcohol consumption?
- As the TIXC, how would you handle this situation?

CASE STUDY PART II

- The investigator amended the investigation report to include information about Gianna's alcohol consumption.
- The investigators recommended that Jeremy be found not responsible for a policy violation based upon the original framing of the complaint.
- The hearing panel was comprised of four College employees who had been trained by the Title IX Coordinator in Title IX and hearing procedures.
- Gianna requested that the student who found her on the bathroom floor the night of the incident and the RA she spoke to be allowed to testify to the panel. The panel declined this request. Gianna also requested an expert witness to discuss the effects of alcohol and Adderall on the body, and that too was denied.

CASE STUDY PART II (CONT.)

Questions:

- As the Title IX Coordinator, how would you respond to this situation?
- What if Gianna does **not** appeal the decision?
- Is there additional training to provide to the Title IX Team?

TITLE IX TEAM DISCUSSION QUESTIONS

- What does your core team look like?
 - Structure
 - Roles and functions
- What does your extended team look like (if applicable)?
- What is working?
- What is not working?
- What would improve your team/s and its/their functioning?

LEVERAGING AND EMPOWERING TIXC AUTHORITY: VISIBILITY

Students

- Attend meetings
- Connect with student leaders
- Consider ways to include students in program planning and trainings
- Establish trust
- Communicate honestly, openly, and clearly
- Never make promises

Colleagues

- Attend meetings
- Connect with teacher/faculty leaders
- Schedule focus groups
- Keep open door policy
- Steer away from “principal office” mentality
- Establish trust
- Partner and collaborate

LEVERAGING AUTHORITY (CONT.)

The power of collaboration

- Senior Administrators:
 - Can help enforce training attendance/completion
 - Provide additional resources
- Academic Affairs:
 - Incorporating aspects of TIX education into curriculum
 - Classroom presentations
 - Inclusive library collections
 - Can be members of your TIX team
- Student Affairs:
 - Student programming
 - Peer-to-peer training
 - Support services
- Business Affairs:
 - Grant-funding
- General Counsel:
 - Policy
 - Procedures
 - Review reports/case documents
 - Response to subpoenas, lawsuits, OCR complaints

DISCUSSION

LEVERAGING YOUR AUTHORITY

- What have you or your institution done to:
 - Leverage your authority and/or empower your position?
 - Enhance your institutional profile?
 - Get buy-in from senior leadership?
 - Secure more resources:
 - For resolution-based efforts? (e.g., Investigators)
 - For programming and education efforts?
 - For training efforts?
- What are you struggling with most?
- What has not worked?



POLICY MANAGEMENT

- Creating and Implementing Appropriate Policy
- Publication Requirements
- Coordinating the Overlap of Multiple Policies
- Taking inventory of Existing Policies

CREATING AND IMPLEMENTING APPROPRIATE POLICY & PROCEDURES

- The Title IX Coordinator must be an integral part of the policy/procedure development and review process
 - Ensure all policies/procedures related to sex/gender misconduct and discrimination are legally accurate and complete
 - Confirm that new or revised grievance procedures are posted and published promptly and that old procedures are removed from publications and websites
 - Beware of multiple conflicting or varying versions of published policy
 - Internally maintain copies of old policies and procedures for reference in the event of a lawsuit, etc.

PUBLICATION REQUIREMENTS

- Students and employees should **know policy exists, how it works, and how to file a complaint**
- 2020 Regulations require specific information to be published to the following:
 - Students (including applicants for admission)
 - Employees (including applicants for employment)
 - All unions or professional organizations holding collective bargaining or professional agreements with the school/district

TITLE IX COORDINATOR CONTACT

- The Title IX Coordinator's contact information, and the school's Title IX-based policy, must be **prominently displayed** on its **website**, if any, and in each **handbook or catalog**
- Contact information includes
 - Name/Title
 - Office address
 - Email address
 - Telephone number



COORDINATING THE OVERLAP OF MULTIPLE POLICIES

- Coordination Responsibilities
- Sources of Policy Requirements
- Taking “Inventory”
- Policy Management Tips

COORDINATION RESPONSIBILITIES

- If the institution has multiple policies and procedures (for faculty, staff, students), the institution must ensure that these policies are not conflicting, or do not contain conflicting definitions
 - A strong argument for a single policy!
 - ATIXA’s One Policy, Two Processes Model (1P2P)
- Remember live hearings are required for institutions of higher education under Title IX for all sexual harassment formal complaints. This goes for faculty, staff, and student sexual harassment complaints.

SOURCES OF POLICY REQUIREMENTS

- Federal/State Case Law
- Federal/State statutes
- Federal/State regulations
- Collective Bargaining Agreements
- OCR Resolution Agreements
- Best Practices/Risk Management requirements

COORDINATING THE OVERLAP OF VARIOUS POLICIES AND PROCEDURES

- Board-level Policy
 - e.g., Equal Opportunity/Non-Discrimination Policy
- Board-level Administrative Procedure
 - e.g., Harassment Grievance Procedures
- Employment/Human Resources Policy and Procedures
- Employee/Staff Handbooks
- Student-level Policy and/or procedures
 - e.g., Conduct Code
- Student/Parent Handbooks
- Informal protocols
 - e.g., interaction with campus police/public safety, search processes

TAKING “INVENTORY”

Are all of these “policy sources” consistent with each other?

- Harassment and Discrimination policies and procedures (required by Title IX, often required under state law)
- Anti-bullying/cyberbullying policy (often required under state law)
- Transgender and Gender Expansive Student policy/procedures
- Staff conduct code/HR policies and procedures
- Staff conduct with students
- Collective Bargaining Agreements
- Employment Contract terms

TAKING “INVENTORY” (CONT.)

- Hazing policies
- Student conduct code and processes (often defined by state law)
- Disciplinary policies and procedures (including removal) for students with disabilities
- Weapons, violence, and school safety protocols
- Child abuse reporting (and procedures) (often defined by state law)
- Computer, network, and technology acceptable use
- Athletics policies and procedures

TAKING “INVENTORY” (CONT.)

- Student use of cellular telephones and other electronic devices
- Student dress code
- School-sponsored travel
- Parent/guardian involvement
- Education records (defined by FERPA and sometimes state law)
- Personnel records (often defined by state law)
- Wellness policy (required under federal law; only applicable if district chooses to include sex- and gender-based wellness items)

TIPS FOR MANAGING POLICY CHANGES

Take	Take the lead in drafting the policy, if possible
Seek	Seek assistance from legal counsel and compliance administrators
Incorporate	Incorporate constituent feedback by scheduling sessions with key stakeholders
Find	Find an opportunity to train senior administrators and board members as a tool to mitigate policy rejection



FINAL PLANNING

- Title IX Compliance Checklist
- VAWA Compliance Checklist
- Prevention and Programming Compliance Checklist

TIX REGULATIONS COMPLIANCE CHECKLIST

- Notifications of Recipient's Title IX Coordinator
- Notifications that Recipient does not discriminate on the basis of sex in its education programs and activities
- Policy includes 34 C.F.R. § 106.30 definitions
- Recipient's response to sexual harassment in accordance with 34 C.F.R. § 106.44
- Adopted grievance procedures in compliance with 34 C.F.R. § 106.45
 - Including and defining retaliation in accordance with 34 C.F.R. § 106.71
- Adhering to confidentiality when possible

VAWA COMPLIANCE CHECKLIST

- Maintain incident statistics for dating violence, domestic violence, sexual assault, and stalking
- Revised categories of bias for Clery Act hate crime reporting
- Required description of disciplinary proceedings for dating and domestic violence, sexual assault, and stalking
- Description of programs in ASR
- Listing of all available sanctions
- Description of protective measures
- Posting of Title IX Coordinator contact information

PREVENTION AND PROGRAMMING COMPLIANCE CHECKLIST

- Provide incoming students and new employees with programming and document it within the ASR
- Provide on-going prevention and awareness campaigns for students and employees and describe these in the ASR
- Have clear definition for:
 - Awareness programs
 - Bystander intervention
 - Ongoing prevention and awareness campaigns
 - Primary prevention programs
 - Risk reduction



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Questions?



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