TITLE IX COORDINATORS AS COMPLIANCE OFFICERS
What was one area of new regulations that you were able to implement with ease?

What’s one area that is/was much harder to implement?
# HIGHLIGHTS OF 2020 TITLE IX REGULATIONS - FINAL RULE

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Notice Requirements</td>
<td>Impact on Mandated Reporters/Responsible Employees</td>
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<tr>
<td>Covered Prohibited Conduct: Definitions, Scope, and Jurisdiction</td>
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<tr>
<td>Burden of Proof</td>
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<tr>
<td>Move from Single Investigator to Live Hearing Model</td>
<td>Cross Examination Requirement</td>
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<td>Impact on Employees</td>
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Activity #1: Select a category and share a best practice you have implemented, or one you are prepared to implement, that fits that category.

Category 1: Structure and Staffing

Category 2: Reporting and Response

Category 3: Investigations

Category 4: Hearings and Appeals

Category 5: Prevention and Awareness
Applying the Seven Elements of Compliance to Implementation of the New Title IX Regulations
7 (Really 8) Elements of Compliance

- Standards of Conduct/Policies and Procedure
- Compliance Officer/Committee Oversight
- Education and Training
- Monitoring and Auditing
- Reporting and Investigating
- Enforcement, Discipline, and Incentives
- Response and Prevention
- Risk Assessment
Title IX Compliance Plan

1) Standards, Policies, and Procedures
   – Must have published grievance procedures and specific notification and posting requirements

2) Governance and Administration
   – Must designate a Title IX Coordinator
   – Supporting staff (Investigators, hearing administrators, etc.)

3) Education and Training
   – New training requirements for administrators

4) Monitoring and Auditing

5) Reporting and Investigation
   – New guidelines about what constitutes a report
   – Specific requirements for investigations and process

6) Enforcement, Discipline, and Incentives
   – New requirements for live hearings
   – Restrictions in interim measures and actions taken before final decision

7) Response and Prevention
   – VAWA Education and Prevention Requirements Still Apply

8) Risk Assessments
   – August 14th Compliance Deadline Forces Prioritized Response
STEPS TO COMPLIANCE

Step 1: Understanding Scope
Step 2: Lay the Foundation
Step 3: Assess and Prioritize
Step 5: Spread the Knowledge and the Resources
Step 6: Enforce, Respond, and Reinforce
Step 7: Test and Monitor for Effectiveness
Step 8: See the Change
Defining the "What"
Defining the Scope and Requirements of Your Title IX Compliance Program
Free Resources to Define Scope and Requirements

DOE Summary of Major Provisions
ATIXA Regulation Resource Center
SUNY Student Conduct Institute Joint Guidance
CUPA HR Sexual Harassment Resources

GUIDING QUESTIONS:
What does our current Title IX Compliance Program look like?
  What, if anything, is contrary to the new regulations?
  What can we maintain?
  What must we change?
Defining and Sharing the “Why”
Customizing Your Program to Get Buy-In and Top Down Support
GUIDING QUESTIONS

• How do the new Title IX Regulations fit or challenge your:
  – Ethical Code of Conduct
  – Student Code of Conduct
  – Employee and Faculty Conduct Policies
  – Mission and Values
  – Strategic Plan
  – Campus Culture

• Who do the new Title IX Regulations:
  – Protect?
  – Harm?
  – Challenge?
  – Support?
  – Impact?
Identifying the “Who”
Structure, Staffing, and Responsibilities
GUIDING QUESTIONS

• What positions are required for compliance?
  – Title IX Coordinator/Deputy Coordinators
  – Investigators
  – Hearing Staff/Panel Members
  – Appeals Staff
  – Advisors
  – Confidential Offices

• What departments are impacted by compliance?
  – General Counsel
  – Human Resources
  – Student Affairs
  – Athletics
  – Student Conduct

• What overlooked departments or staff could assist with compliance?
  – Athletics?
  – Faculty?
  – Counseling/Health?
  – Campus Safety/Law Enforcement?
Defining the “How”

Tracking, Training, Communication
REQUIRED STEPS TOWARDS COMPLIANCE

GOVERNANCE, STAFFING, AND OVERSIGHT
RISK ASSESSMENT
POLICY AND PROCEDURE
TRAINING

COMMUNICATION
SUPPORT
ENFORCEMENT
TITLE IX COORDINATOR AS THE CAMPUS EXPERT
AGENDA

I. Becoming your campus subject matter expert

II. Establishing your presence

III. Building a coalition

IV. Collaborations
I never thought I could... [fill in the blank].

Submit your responses in the Chat Box.
STEPS TO TAKE TO BECOME AN “EXPERT”

• Practice
• Trial & Error
• Spoke to others
• Find a Mentor
• Jumped in the deep end
• Questions & Research
• Commitment/ Investment
So, do you think you are your campus’s Title IX expert?
BECOMING A SUBJECT MATTER “EXPERT” - TALK THE TALK

- Training and Certifications
- Whitepapers
- Department of Education
- Other Title IX Coordinators
ESTABLISH A PRESENCE - WALK THE WALK

- Seen & Be Seen
- Campus Meeting & Presentations
- Website/ Social Media
- Crisis Manager
BUILDING A COALITION - CAMPUS WHO’S WHO

- General managers/owners
- Coaching team
- Game changers/MVPs
- Teammates
- Outfielders
- Spectators
A League of Your Own: Building Your Dream Team
OTHER CONSIDERATIONS TO MAINTAIN YOUR EXPERTISE

- Campus Climate
- Managing Change
  - Staffing
  - Legal landscape (federal, state, and competing laws)
- Proactive vs. Reactive
- Negative PR
- Your Personality/Demeanor
COLLABORATIONS

Programming
- Health Center
- Counseling

Students
- Student Government
- Greek Life

Employees
- Faculty Senate
- Staff Council

Other
- IT
- Public Relations
MAINTAINING AND CULTIVATING RELATIONSHIPS

- Consistency
- Receiving Feedback
- Self-Awareness
- Leadership Development
- Creditability
- Validating Others
- Open to Change
- Humility
- Accessibility
- Life-Long Learner
SHARE WITH US!
What have been some of your own strategies to establish yourself as a reliable and visible Title IX campus expert?
PITFALLS IN BEING THE CAMPUS EXPERT

- Self-doubt
- Doubt of others
- Loss of credibility
- Getting through the tough times
- Re-establishing confidence
TITLE IX COORDINATOR AS A COMMUNICATIONS EXPERT
T9C in middle of competing obligations:

- Involved parties
- University community (students, employees, parents, etc.)
- University as an entity

**Trust** and **Distrust** (Makela and Shelton, 2012)

- Two separate ranges
- Trust = slow, gradual
- Distrust = rapid, persistent (20+yrs)
All the things you don’t write/say, mindful of institutional liability
LEGAL REQUIREMENTS

Confusing messaging from related laws:

• FERPA
• Clery Act (Timely Warnings, Emergency Notifications)
• Title IX Guidance (now)
• Title IX Regulation (soon)
• State Laws (vary)
“Sexual assault/Title IX” ranks 2nd in top reputational risks over past three years (behind “Campus climate”); also 2nd in top risks anticipated in the future (United Educators, 2017)

Communication ideally addressed at an enterprise scale, with clear expectations, division of labor, and protocols understood at all levels of organization (board, top leadership, front line staff, etc.)

- Identify, assess, and manage risks
- Build resiliency to overcome (inevitable) risk events
What are your major institutional/structural barriers to solid Title IX communications?
EFFECTIVE STAKEHOLDER ENGAGEMENT

Provide honest, transparent, & accessible information

Custom delivery tailored to stakeholder needs and culture

Seek to understand what your stakeholders value; be curious, not judgmental

Provide feedback on how you have addressed & resolved their issues

Track and record your engagement over time; refresh before showing up

(SustaiNet, 2019)
What are some creative communication touchpoints that you have seen deployed to reach students, employees, parents, or others? (They can be Title IX-related or from other fields or industries.)
FIGHT THE POWER
(wait...that’s you)

I AM THE MAN
and I’m fighting myself

BEWARE
WHAT YOU SHARE
THE SAVVY TITLE IX COMMUNICATOR...

- Conveys professionalism and competence
- Knows their audience and does their homework
- Appreciates institutional liability
- Commits to accessibility and inclusivity
- Communicates with INTEGRITY ALWAYS
CASE STUDY!

In small groups, you’ll have the opportunity to offer your expertise by reviewing a case study that has caught your local newspaper’s attention. You’ll have the opportunity to discuss options for handling this matter and offering strategies to mitigate rumors and negative PR.
REFRESH & RESET

Based on what you learned yesterday, what resonated with you the most and why?
CONSIDERATIONS FOR PROCESSING STUDENT VS. FACULTY/STAFF CASES
SHARE OUT & DISCUSS!

What have been some of your greatest challenges managing faculty/staff cases vs. student cases?
PHILOSOPHICAL QUESTION

“Do you approach faculty cases and student cases the same or differently?”

It’s complicated.
SIMILARITIES

• Title IX Applicability
  – Notices
  – Evidentiary Standard
  – Other Regulatory Requirements
• Other Laws
  – Clery/VAWA (constituent group irrelevant)
• Investigatory Approach
• Care, Dignity, Privacy, Respect, Etc.
• Universal Institutional Policies/Procedures (?)
Does your institution currently maintain the same Title IX procedures for students and faculty/staff?
DIFFERENCES

• Title IX Specifics
  – Education Program or Activities v. Employment
  – *Quid Pro Quo* (employees only)
  – Compelled Investigations
  – No Informal Resolution for Sexual Harassment by an Employee
  – Emergency Removal v. Administrative Leave
  – Supportive Measures and Remedies
  – Retaliation
DIFFERENCES (CONTINUED)

• Other Laws
  – Title VII (employment only; preemption circuit split)
  – FERPA (students only)
  – State and Local Employment Laws (N/A for students)
  – ADA, Section 504 (different parts)

• Contractual Considerations
  – Code of Conduct v. Employee/Faculty Handbooks
  – Collective Bargaining Agreements
DIFFERENCES (CONTINUED)

• Key Partnerships, Practical Considerations
  – For employees, stakes include livelihood, professional reputation, future employment prospects
  – Student Affairs v. Human Resources v. Faculty Administration
  – Decision-Makers, Appeals

• Training/Education
  – Venues, Approach/Focus, Delivery
  – “Responsible Employees”/Mandatory Reporting
5 KEY PREPARATORY CONSIDERATIONS AT THE INSTITUTIONAL LEVEL

1) Policy/Procedural Framework
2) Tailoring Communications
3) Mitigating Power Dynamics
4) Preparing Investigative Staff
5) Preparing Decision-Makers and Appellate Decision-Makers
BEST PRACTICES FOR LEADING SEXUAL HARASSMENT/MISCONDUCT INVESTIGATIONS
Changes to Investigations from New Regs

- Notice requirements and process for getting to formal investigation
- New Scope, Jurisdictions, and Definitions
- Application to Employees
- Distribution and Review of Evidence and Report
  - 10-Day Review Periods
  - Involvement of Advisors
- Training for Investigators
- Removal of Single Investigator Model
- Relevancy of Evidence and what must be included
- Witnesses including Character and Expert Witnesses
## WHAT ARE WE INVESTIGATING?

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<thead>
<tr>
<th>Jurisdiction</th>
<th>Location</th>
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<tbody>
<tr>
<td></td>
<td>Program/Activity</td>
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<tr>
<td></td>
<td>Control Over Involved Parties</td>
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<th>Definitions of Prohibited Conduct</th>
<th>VAWA Crimes</th>
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<td></td>
<td>Quid Pro Quo</td>
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<td>Severe, Pervasive, and Objectively Offensive</td>
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Title IX vs Title VII and application to Employees

What does your policy say?
THINGS TO CONSIDER AS PART OF GATEKEEPING FUNCTION

• What is a formal complaint?
• Jurisdiction and scope
• Title IX Coordinator signing complaint
• Decision on type of resolution
• Informal vs. Formal
• Dismissal
How is your institution managing complaints that fall outside the Title IX Coordinator’s jurisdiction?
OVERVIEW OF AN INVESTIGATION

1. Formal Complaint/Notice to Title IX Coordinator
2. "i"nvestigation/Gate Keeping Function Simultaneous with Supportive Measures
3. Title IX Determination for Application and Formal/Informal
4. Investigation
5. Appointment of Investigators with Ability to Appeal Appointment
6. Notice of Allegation
7. 10-Day Evidence Review Period
8. 10-Day Report Review Period
ROLE OF THE TITLE IX COORDINATOR

- Gatekeeping Function
- Supportive Measures
- Emergency Removal
- Training Oversight
- Actual Notice
- Coordinates Individual Functions of Resolution Process
ROLE OF THE INVESTIGATOR

- Gather all information regarding an allegation and determine relevancy
- Interview all parties and witnesses, including character and expert witnesses
- Fact gathering vs. fact finding
- Collect and organize evidence and distribute to parties for review and comment
- Weighing evidence
- Write a detailed investigative report

Preponderance of the Evidence or Clear and Convincing
WHO SHOULD/SHOULD NOT SERVE?

- Attorneys?
- Outside Investigator?
- General Counsel?
- Campus Safety/Security?
- Title IX Coordinator/Deputy Title IX Coordinator?
- Faculty?
- Students?
- Human Resources?
- Other members of Title IX or Conduct Team
REQUIRED TRAINING

• Definition of Sexual Harassment
• Educational Program or Activity
• Conducting an Investigation and Relevancy of Evidence
• Bias Prevention
• Technology Use
ADDITIONAL TRAINING CONSIDERATIONS

• Trauma informed investigations in light of new regulations?
• How to conduct remote investigations
• Working with advisors
• Impact of Alcohol and Drugs on Consent
• Allegations involving minors
• Terminology, language
• Social Media
Which standard of proof does your campus use or plan on using for your Title IX cases?
BUILDING YOUR INVESTIGATION TOOLKIT

Policy and Procedures

Planning Documents and Templates
- Prohibited Conduct Breakdown and Elements Worksheet
- Communication and Evidence Logs
- Evidence Analysis Chart and Relevancy Buckets
- Pre-investigation Checklist

Technology Plan
- Consistent plan for use of technology to support intake and investigation
- Method for evidence collection and distribution
- Confidentiality and record security

Other Considerations
- Model and policy for working with advisors
CONSIDERATIONS FOR THE TITLE IX COORDINATOR’S INVOLVEMENT DURING AN INVESTIGATION

• What role does the Title IX Coordinator play in the review process during investigation and before finalizing the report?
• Coordination amongst Title IX Coordinator and Investigator related to ongoing provision of supportive measures?
• Elevation of safety risk factors that may trigger need for emergency removal considerations?
• Assistance with enforcement of policy deviations or violations?
• Need for amended notification for violations?
SETTING YOUR RESOLUTION TIMELINE

1. Gatekeeping Function
2. Supportive Measures and Risk Management
3. Path of Resolution
4. Investigation Phase 1
5. Phase 2: Evidence Review
6. Phase 3: Report Review
7. Final Report
8. Transfer for Final Resolution

SETTING YOUR RESOLUTION TIMELINE

- Gatekeeping Function
- Supportive Measures and Risk Management
- Path of Resolution
- Investigation Phase 1
- Phase 2: Evidence Review
- Phase 3: Report Review
- Final Report
- Transfer for Final Resolution
Introduce yourself and explain your role as an investigator

- You are the fact gatherer, not the fact finder.
- Explain rules and procedure
- Define process for seeking additional supportive measures and how you will communicate with Title IX Coordinator

State that you will be taking notes during the interview and explain why this is important

Explain the Investigation Process

Explain the role of advisors

Ask the interviewee if they have any questions about the process

- Information will be kept as confidential as possible
- Anti-Retaliation and Intimidation Policy
- Purpose of Investigation
- Amnesty Policy if Applicable

Next Steps

- Follow up with Title IX Coordinator
COLLECTING EVIDENCE

How are you storing physical evidence?

Often depends on whether your University has sworn law enforcement.

Who is providing the evidence?

Potential Sources of evidence:
- Text messages, social media, phone records, etc.
- Diaries, journals, timelines, etc.
- Law Enforcement
- Campus Records
- Medical Evidence
CREDIBILITY ASSESSMENTS, FACT ANALYSIS, AND RECOMMENDATIONS: WHAT GOES IN THE REPORT?

Credibility Observations
Without Findings of Fact or Determination

Using Evidence to Support Fact Finding Through Report Organization

Recommendations?
ORGANIZING YOUR DIGITAL CASE FILE

UNDERSTANDING OF SYSTEM FOR COLLECTION AND DISTRIBUTION

SORTING AND DISTRIBUTING EVIDENCE AND REPORT APPROPRIATELY

FINALIZING THE OFFICIAL RECORD OF THE INSTITUTION’S RESOLUTION
QUESTIONS AND KEY CONSIDERATIONS WHEN IMPLEMENTING THE NEW REGS

- Determining Scope and Application of Policies and what you investigating
- Challenges with remote or digital investigations
- Working with Advisors
- Tandem Law Enforcement Investigations
- Application to Employees
  - Faculty Unions and Contract
- Respecting Confidentiality while not prohibiting communication
- Working with Witnesses
- Investigator role in the Hearing Process
- Enhanced record protection when distributing reports including storage, redaction, and FERPA considerations
SHARE OUT & DISCUSSION!
What have been some of your procedural challenges related to facilitating your investigation process? What have you recently adjusted considering the proposed regs, if any?
Complex Case Studies

We will break you into three evenly distributed groups and ask you to read a case study and answer the questions provided. Please turn on your webcams/mics once in the break room and one of our faculty will accompany you to take notes and report out your discussion in the large group debrief (if time allows).
Case Study Large Group Share-Out ...(if time allows)

Joint Guidance on Federal Title IX Regulations by SUNY (The State University of New York)

https://system.suny.edu/sci/tix2020/
Thank you!

Please remember to complete the event evaluation. Your comments will help us continually improve the quality of our programs.