Title IX Coordinator Bootcamp
February 23/March 2, 2022
Session 1
©Institutional Compliance Solutions 2022 All Rights Reserved
ABOUT US

Courtney Bullard
Founder
Institutional Compliance Solutions

Betsy Smith
K-12 Lead/Athletics Specialist

Celeste Bradley
DEI & EEO Lead

©Institutional Compliance Solutions 2022 All Rights Reserved
Housekeeping

- Chat bar
- Breaks
- Materials
Agenda

- Work alongside the Compliance Workbook
- Collaborate and share with colleagues
- Work through hypotheticals on key concepts
Purpose of ICS Training

Not Legal Advice
Designed to help you work through your compliance efforts for your institution

All Levels
Course is appropriate for all levels and we have all levels in here!

Title IX Regulations
This course goes well beyond the Title IX regulations, but we will cover it
Take a break, take a breath!
Your Role

The Title IX Coordinator is the leader of a team & coordinates all Title IX compliance efforts.
Team Leader Responsibilities

1. Regular meetings with team
2. Facilitate process
3. Available for team during process
4. Triage reports of discrimination
5. Policy & procedure expert & review

©Institutional Compliance Solutions 2022 All Rights Reserved
Sexual Harassment
Gender Equity in Athletics
Discrimination Based on Sex
Pregnancy Discrimination

COMPLIANCE
Title IX
Discrimination

Sexual Harassment

Athletics

SOGI

Pregnancy

©Institutional Compliance Solutions 2022 All Rights Reserved
It's more than compliance...

Care  Support  Prevention  Education

©Institutional Compliance Solutions 2022 All Rights Reserved
What Has Been Happening with Title IX Compliance
The Evolution of Title IX

1. 2001 Title IX Guidance on Sexual Harassment
2. 2011 Title IX Guidance (DCL)
3. 2014 Title IX Guidance (Q & A)
4. 2015 Title IX Guidance (DCL)
5. 2017 Q & A and DCL Withdrawing 2011 and 2014 Guidance
6. 2018 Notice of Proposed Rulemaking
7. May 6, 2020 Title IX Regulations w/August 14, 2020 Implementation Deadline
8. April 6, 2021 DOE Launches Comprehensive Review of the Title IX Regulations
9. June 16, 2021, Notice of Interpretation "On the Basis of Sex"
10. July 20, 2021 Q & A on the Title IX Regulations and Sexual Harassment

EXPECTED

April
May 2022
Title IX Rule Changes/Amendments

©Institutional Compliance Solutions 2022 All Rights Reserved
Evolution of Sub-Reg guidance re: SOGI under Title IX

- 2016: DCL - Title IX includes SOGI
- 2017: DCL - OCR reverses position & withdraws earlier guidance
- Jan. 2021: "Sex" means biological sex
- Jan. 2021: EO issued reverting back to 2016 position
- March 2021: DOJ issues memo
- June 2021: OCR publishes notice that sex includes "SOGI"
Evolution of Title IX Offices and Institutional Responses
What We are Seeing

*Stand alone coordinator
*Coordinator + dedicated investigators

*Title IX Office
*Sexual Misconduct Prevention & Response
*Office of Institutional Equity
*Office for Civil Rights & Gender Equity

©Institutional Compliance Solutions 2022 All Rights Reserved
Questions?

INSTITUTIONAL COMPLIANCE SOLUTIONS

©Institutional Compliance Solutions 2022 All Rights Reserved
Structural Evaluation
Visibility & Access of Title IX Coordinator

- Address
- Phone Number
- Voicemail?
- Email Address
- Accessibility of Reporting On-line
- Location
- Safety
- Comfort
Evaluation of Program, Policy, Positions, & People

©Institutional Compliance Solutions 2022 All Rights Reserved
Policy Evaluation

©Institutional Compliance Solutions 2022 All Rights Reserved
Triaging a Report of Discrimination

Report
- Non Title IX
- Title IX Discrimination (non harassment)
- Title IX Sexual Harassment
- Referral
- Response
- Process?
- Formal Complaint
- No Formal Complaint
- Title IX Grievance Process

©Institutional Compliance Solutions 2022 All Rights Reserved
Policy Evaluation: Ownership, Review, Internet Search

©Institutional Compliance Solutions 2022 All Rights Reserved
Evaluation of Positions – Title IX Team

- [ ] 5 stars
- [X] 4 stars
- [ ] 3 stars
- [ ] 2 stars
- [ ] 1 star

©Institutional Compliance Solutions 2022 All Rights Reserved
TITLE IX TEAM

Title IX Coordinator

Responsible Employees/Officials w/Authority
Advisors
Investigator(s)
Decision-Maker(s)
Appellate Decision-Maker(s)
Informal Resolution Facilitator(s)

©Institutional Compliance Solutions 2022 All Rights Reserved
TITLE IX TEAM

INVESTIGATOR
Cannot serve as the Decision-Maker or Appellate Decision-Maker. May be the Title IX Coordinator but if possible, it is recommended that this individual be separate from the Title IX Coordinator. It is not recommended that an Investigator serve as the Informal Resolution facilitator in a case that they have started, or later serve, as an Investigator.

APPELLATE DECISION MAKER
Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an Appellate Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as an Appellate Decision-Maker.

TITLE IX COORDINATOR
Cannot serve as the Decision-Maker or Appellate Decision-Maker. May serve as an Investigator—though if possible, it is recommended that another individual serve as an Investigator. May serve as an Informal Resolution Facilitator.

DECISION MAKER
Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Appellate Decision-Maker. It is not recommended that a Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as a Decision-Maker.

INFORMAL RESOLUTION FACILITATOR
May be the Title IX Coordinator. It is not recommended that an individual who has or will serve as an Investigator, Decision-Maker or Appellate Decision-Maker in the same case serve as the Informal Resolution Facilitator.

©Institutional Compliance Solutions 2022 All Rights Reserved
Beyond the Title IX Team Evaluation of Campus Allies/Partners
Title IX Advisory Committee Evaluation
Member Considerations: Campus Safety, HR, Counseling, Student Affairs, Academic Affairs
Other Committees Evaluation
BIT, CARE, Bias Response, SMRV, Workplace Violence Committee

©Institutional Compliance Solutions 2022 All Rights Reserved
Education, Training, & Prevention Evaluation

©Institutional Compliance Solutions 2022 All Rights Reserved
Training Evaluation
Student Training, Title IX Team, Faculty, Staff, High Risk Areas

©Institutional Compliance Solutions 2022 All Rights Reserved
Care & Support Evaluation

Remember, care and support prevent barriers to reporting.
Report vs Formal Complaint

Report
- Initiates a response

Formal Complaint
- May initiate a formal Title IX Grievance Process

©Institutional Compliance Solutions 2022 All Rights Reserved
Evaluation
Who makes initial contact with reporter? Who makes initial contact with complainant? How is it made?

©Institutional Compliance Solutions 2022 All Rights Reserved
Supportive Measures

- Conduct a 12 month analysis.
- How often are you revisiting them?
- How are they tracked?
Ultimate Goal: Removing Barriers to Reporting

- Location
- Team Not Knowing Roles
- Website Deficiencies
- Policy Deficiencies
- Reputational Harm

©Institutional Compliance Solutions 2022 All Rights Reserved
Barriers to Reporting Evaluation
Questions?

INSTITUTIONAL COMPLIANCE SOLUTIONS

©Institutional Compliance Solutions 2022 All Rights Reserved
Triaging a Report of Discrimination

Report

Non Title IX

Referral

Title IX Discrimination (non harassment)

Response

Process?

Title IX Sexual Harassment

Formal Complaint

No Formal Complaint

Title IX Grievance Process
Changes & Requirements Overview

- Prescriptive Title IX Process
- Officials with Authority
- Policies & Procedures
- Team & Training
- Coordinator with Authority

© Institutional Compliance Solutions 2022 All Rights Reserved
TITLE IX SEXUAL HARASSMENT + EDUCATION PROGRAM/ACTIVITY = TITLE IX FORMAL GRIEVANCE PROCESS
Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.
Education Program or Activity/Jurisdiction

Does the institution have substantial control over the respondent?

Title IX  Yes  No  Not Title IX

Does the institution have substantial control over the context in which the sexual harassment occurred?

Against a complainant in the U.S. AND
1) On campus/in or during online class, or
2) Off campus building owned or controlled by institution or recognized student organization, or
3) Off campus, institution sponsored event

Title IX  Yes  No  Not Title IX

Is the complainant student/employee or attempting to be one?

Complainant or Title IX Coordinator May File/Sign Formal Complaint

Only Title IX Coordinator May File/Sign Formal Complaint

©Institutional Compliance Solutions 2022 All Rights Reserved
Hal, a professor, files an online report alleging that a student in his class is harassing him because he is gay. Hal alleges that the student has called him derogatory names under his breath during class on several occasions and that when he arrived at class the other day, "fag" was written on the board in class. As a result of the comments and the chalkboard incident, he no longer feels safe teaching his course.
Sandra is a student in the dental assisting program. She is 7 months pregnant and experiencing complications. As a result, her physician has ordered bedrest. Sandra alleges that she informed her professor that she could not complete the final course requirements in person as a result of her bedrest. Her professor has told her that she will fail the course because she must take the final exam in person. Sandra files a report with your office.
Campbell files an online report of sexual harassment with your office. Campbell is a staff member in the admissions office. She alleges that another staff member continues to "hit on her." He has asked her out on two occasions, and she has turned him down. On one other occasion he told her she has a nice ass. On another occasion he told her that he wants to see her in a bathing suit when she was talking with a friend about going to the pool with her over the weekend.
Assume the facts in the prior slide; however, Campbell files a Formal Complaint containing the same information. What should you do?
Olivia is a staff member in financial aid. She alleges that her supervisor is making her uncomfortable and making inappropriate comments.
After speaking with Olivia, you learn that Bob has made the following comments: "One night with me, and you would be on your way to a raise." "All my girls in the office know that to get the best treatment, you have to give the best treatment." Olivia does not have specific dates/times that these occurred but can provide you with a ballpark.
Charlotte is a freshman at ICS University. Her friend, Tyler, sends you an email that states he is concerned for Charlotte. The other night she told him she was sexually assaulted at a party by a "guy named Hal." Tyler thinks Hal is a predator and thinks the university needs to do something about his behavior.
You are able to speak with Charlotte. She says she was raped in a bathroom at a bar off campus by Hal. She states that she did not even know him but later learned his name. She states that he followed her in, locked the door and assaulted her. She is terrified, has not told her parents, and does not want anything done. The assault happened about a week ago.
A few weeks later, Charlotte returns to your office. She states that she keeps seeing Hal around campus. He is trolling her on social media, he has been outside of her classroom on several occasions, and her friends state that he is asking about where she lives saying she was a "good lay." Charlotte wants it to stop, but does not want to do anything formal.
Formal Complaint Deep Dive

- C student/R is student
- C files the day before s/he graduates/R is a student
- C is not an employee/student and R is current employee/student
- C is student/employee and R is a third party
Questions?
Connect
With Us!

Religious Exemptions
Under Title IX
FREE Webinar
March 4

Care & Support
Administrators
Training
March 10

Investigator Training
April 20

Institutional Compliance Solutions
Groups:
Title IX Coordinators Closed Group
K-12 Title IX Coordinators

@TitleIXLawyer

@ICSLawyer

Spring Schedule:
Title IX Coordinator Bootcamp
February 23/March 2, 2022
Session 2

©Institutional Compliance Solutions 2022 All Rights Reserved
ABOUT US

Courtney Bullard
Founder
Institutional Compliance Solutions

Betsy Smith
K-12 Lead / Athletics Specialist

Celeste Bradley
DEI & EEO Lead

©Institutional Compliance Solutions 2022 All Rights Reserved
Housekeeping

- Chat bar
- Breaks
- Materials
Recap

• Collaboration
• Time to Step Back
• Role of Coordinator
• Title IX Past and Present
• Evaluation of program, policy, positions and people
• Triaging a Report
Charlotte is a freshman at ICS University. Her friend, Tyler, sends you an email that states he is concerned for Charlotte. The other night she told him she was sexually assaulted at a party by a "guy named Hal." Tyler thinks Hal is a predator and thinks the university needs to do something about his behavior.
Initial Reach-Out to the Complainant

- You?
- Intake Coordinator?
- Someone else?

©Institutional Compliance Solutions 2022 All Rights Reserved
You are able to speak with Charlotte. She says she was raped in a bathroom at a bar off campus by Hal. She states that she did not even know him but later learned his name. She states that he followed her in, locked the door and assaulted her. She is terrified, has not told her parents, and does not want anything done. The assault happened about a week ago.
A few weeks later, Charlotte returns to your office. She states that she keeps seeing Hal around campus. He is trolling her on social media, he has been outside of her classroom on several occasions, and her friends state that he is asking about where she lives saying she was a "good lay." Charlotte wants it to stop, but does not want to do anything formal.
Formal Complaint Deep Dive

- C student/R is student
- C files the day before s/he graduates/R is a student
- C is not an employee/student and R is current employee/student
- C is student/employee and R is a third party
Emergency Removal
Safety & Risk Analysis

- Who has the ultimate authority to make the determination?
- Are you utilizing a BIT, CARE, or other team?
- Look back and evaluate...

© Institutional Compliance Solutions 2022 All Rights Reserved
Formal Grievance Process Pathway

- Formal Complaint
- Notice of Allegations
- Informal Resolution
- Permissive Dismissal
- Hearing
- Appeal
- Investigation w/Review Periods
Care and Support

To all parties throughout the process

Challenges?

Do you need support from other offices?

©Institutional Compliance Solutions 2022 All Rights Reserved
Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

©Institutional Compliance Solutions 2022 All Rights Reserved
Severe, Pervasive, AND Objectively Offensive

UNWELCOME CONDUCT

SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE

- Severe - can be non-verbal through sexual assault (touching/fondling)
- Pervasive - how often and how widespread
- Objectively Offensive - behavior that would be offensive to a reasonable person under the circumstances

DENIES EQUAL ACCESS

©Institutional Compliance Solutions 2022 All Rights Reserved
Can You Combine Allegations by Multiple Complainants?

Severe Pervasive Objectively offensive

©Institutional Compliance Solutions 2022 All Rights Reserved
Education Program or Activity

Locations, events, or circumstances (operations) over which the district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

Does not create or apply a geographic test, does not draw a line between “off campus/property” and “on campus/property,” & does not create a distinction between sexual harassment occurring in person vs online.
When should a Title IX Coordinator sign a Formal Complaint?
Hypo

Layli is a second year at ICS University. She reports that she was sexually assaulted by Jack in his room after class one night. She states that they were dating, but that she was a virgin so she did not want to have sex with him. Jack picked her up from class and they got in a fight over her lack of "putting out." Layli states that they went to his apartment, they got in another argument, and he raped her when she refused to go further than foreplay.

You meet with Layli and offer supportive measures. Layli does not want to proceed with a Formal Complainant after you explain the process to her.

Will you sign the Formal Complaint as the Title IX Coordinator?

What factors will you consider?
Hypo Cont'd

A few days after Layli meets with you, Olivia makes a report to your office. Olivia says that she has been talking to a student named Jack. She also states that Jack sexually assaulted her at an on-campus party. You meet with Olivia and provide supportive measures. Olivia says that she does not want to file a Formal Complaint because she is afraid of what Jack might do. She has only known him a few weeks, but states he has a temper.

Given this information, will you file a Formal Complaint as the Title IX Coordinator?

Why or why not?

If yes, will it be for both instances or only Layli or only Olivia?

Would you consider an emergency removal in this matter?

Would you allow for an Informal Resolution between Jack and one of the complainants if the other does not want IR?
Informal Resolution

Is it offered?
Do you have the internal structure in place, including templates?
How is it going?
Ways to strengthen it?

REMINDER - Not for employee on student matters
Formal Title IX Grievance Process Evaluation
Questions?
DON’T FORGET

Close the Loop on **ALL** matters

- Informal Resolutions
- Referrals
- Resolution that involves discipline from another office
Record Keeping

The regulations require records to be kept for seven years.

Evaluate

How are you maintaining your records?
How are you tracking supportive measures?
Are you tracking patterns/trends?
Evaluation
Non-Title IX Sexual Harassment

- Rises to sexual harassment but not within your program/activity
- Does not rise to sexual harassment
- Third party sexual harassment
CLERY/VAWA REQUIREMENTS

- Conduct/document adequate, reliable, and impartial investigations
- Conduct an investigation and hearing process that protects the safety
- Both parties are entitled to have an advisor of their choice present for all investigative and disciplinary proceedings (note that participation level of advisor may be constrained by the institution)
- Both parties simultaneously informed in writing of the outcome of any disciplinary proceeding that arises from an allegation of Sexual Assault, Domestic Violence, Dating Violence, or Stalking
- Both parties notified of changes in results that occur prior to when results become final, and will be notified when final
- Possible sanctions and protective measures an institution may impose following an institution’s disciplinary procedure involving Sexual Assault, Domestic Violence, Dating Violence, or Stalking
- Clery Act prohibitions on and protections against retaliation
Non-Harassment Title IX Discrimination

- Allegations of Culture
- Retaliation
- Gender-Equity
- Pregnancy Discrimination
- Other allegations of discrimination based on sex, including SOGI
Hypo

Layli files a Formal Complaint against Jack and the matter is in the investigative stage. It is reported by a witness for Layli, Charles, that Jack threatened to kill him because he is helping Layli. The matter is reported to the police. There are text messages of the threats. Student Affairs is notified of the matter by campus safety.

Student Affairs wants to issue an interim suspension. OK?

What process will this go through on your campus? Does Charles become a Complainant? What if alleged by Layli?
Evaluate Processes for Non-Harassment Title IX Discrimination
Questions?
Other Title IX Matters
Gender Equity in Athletics

- Evaluate your involvement?
- Deputy or Liaison?
- Regular Evaluations of Compliance?
SOGI

- Anti-discrimination statement include SOGI?
- Offices to support SOGI students?
- Accommodations request?
Pregnancy discrimination is a form of sex discrimination under Title IX. Need to address:
*Reports of discrimination
*Accommodation requests
Pregnancy Accommodations

Does your institution use a centralized approach (like ADA)?

If YES, through Title IX Coordinator? Through Disability Resource Center?

If NO, decentralized approach? No approach?

©Institutional Compliance Solutions 2022 All Rights Reserved
Other Matters
Grassroots Efforts Evaluation

List three offices to schedule a conversation with in the next three months...
Sustainability Planning

- Tracking patterns & trends
- Reporting to leadership
- Depth of office
- External assistance for various roles
Identifying Your Title IX Crutch (your people)
Reflect...
Religious Exemptions Under Title IX
FREE Webinar
March 4

Care & Support Administrators Training
March 10

Investigator Training Level 1
April 20

Institutional Compliance Solutions
Groups:
Title IX Coordinators Closed Group
K-12 Title IX Coordinators

@TitleIXLawyer
@ICSLawyer