

*#aiTIXCoordinator*

# TITLE IX COORDINATORS AS COMPLIANCE OFFICERS



## CHAT

**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



Notice Requirements

Impact on Mandated  
Reporters/Responsible Employees



Covered Prohibited Conduct: Definitions, Scope, and Jurisdiction



Burden of Proof



Move from Single Investigator to Live  
Hearing Model

Cross Examination Requirement



Impact on Employees

***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



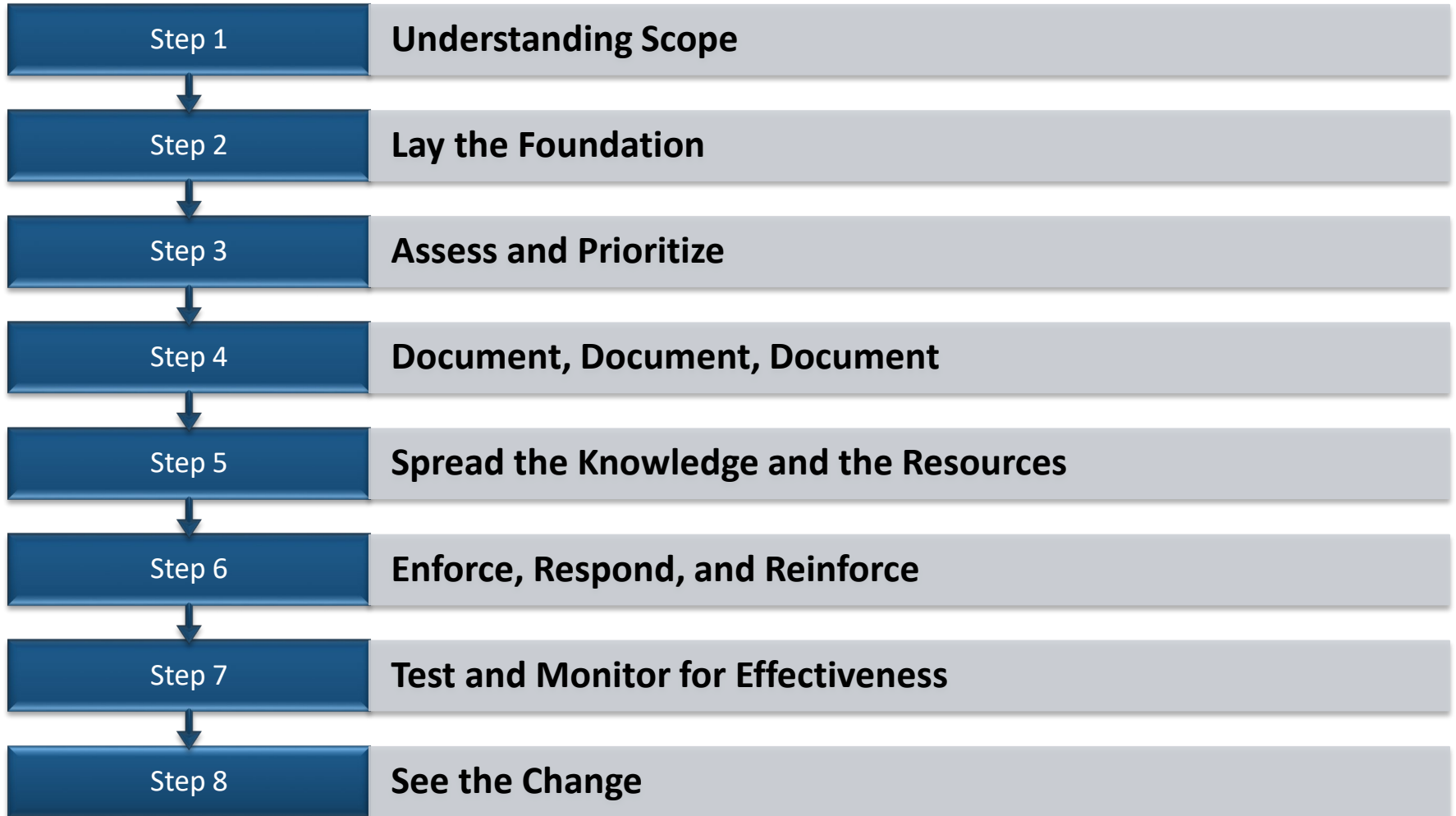
Risk Assessment

# 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 14<sup>th</sup> Compliance Deadline Forces Prioritized Response



# STEPS TO COMPLIANCE







# Defining the "What"

*Defining the Scope and Requirements of Your Title IX  
Compliance Program*



## RESOURCE

# 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?

A hand is pointing at a blue architectural floor plan. The floor plan shows various rooms, including a kitchen, a living area, and a bedroom. The hand is positioned in the upper right quadrant of the image, pointing towards the right side of the plan. The background is a dark, textured surface with a grid pattern.

# Identifying the “Who”

**Structure, Staffing, and Responsibilities**

# GUIDING QUESTIONS



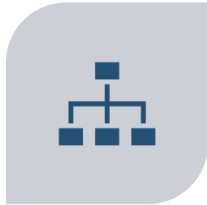
- What positions are required for compliance?
  - Title IX Coordinator/Deputy Coordinators
  - Investigators
  - Hearing Staff/Panel Members
  - Appeals Staff
  - Advisors
  - Confidential Offices
- What departments are impacted by compliance?
  - General Counsel
  - Human Resources
  - Student Affairs
  - Athletics
  - Student Conduct
- What overlooked departments or staff could assist with compliance?
  - Athletics?
  - Faculty?
  - Counseling/Health?
  - Campus Safety/Law Enforcement?

A hand is pointing at a blue architectural floor plan on a white background. The floor plan shows various rooms and corridors. The hand is positioned in the upper right quadrant, pointing towards the center of the plan. The overall image has a soft, slightly blurred quality.

# Defining the “How”

Tracking, Training, Communication

# REQUIRED STEPS TOWARDS COMPLIANCE



GOVERNANCE,  
STAFFING, AND  
OVERSIGHT



RISK ASSESSMENT



POLICY AND  
PROCEDURE



TRAINING



COMMUNICATION



SUPPORT



ENFORCEMENT



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# 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





# CHAT

**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





## POLL

**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

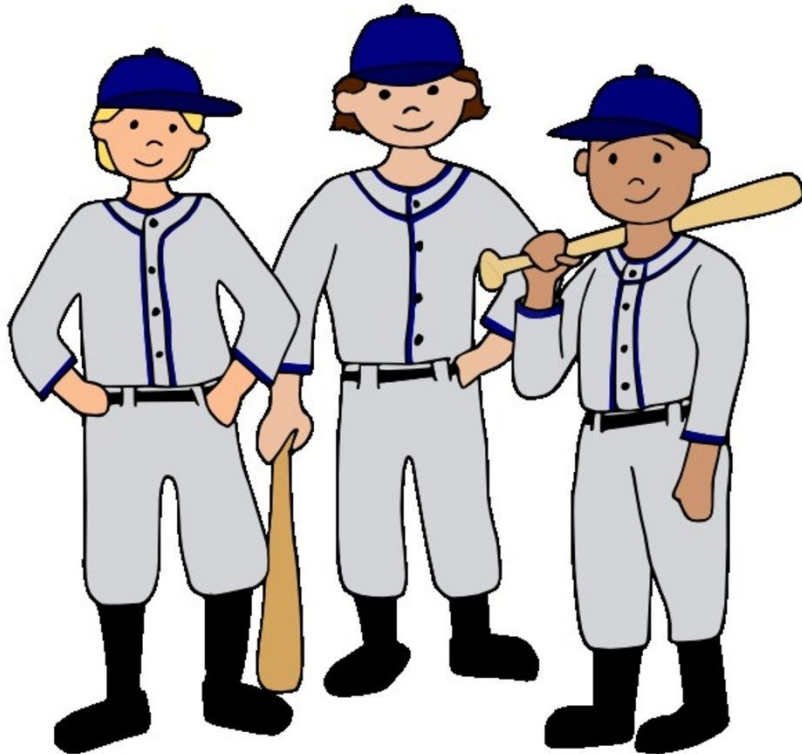


# ESTABLISH A PRESENCE - WALK THE WALK

- 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





# ACTIVITY

## 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





# CHAT

## 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





# QUESTIONS

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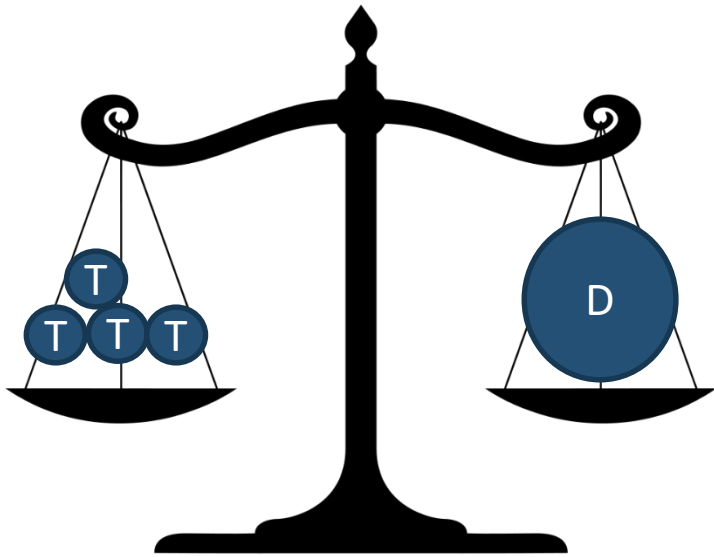
# TITLE IX COORDINATOR AS A COMMUNICATIONS EXPERT



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# WHY COMMUNICATION MATTERS

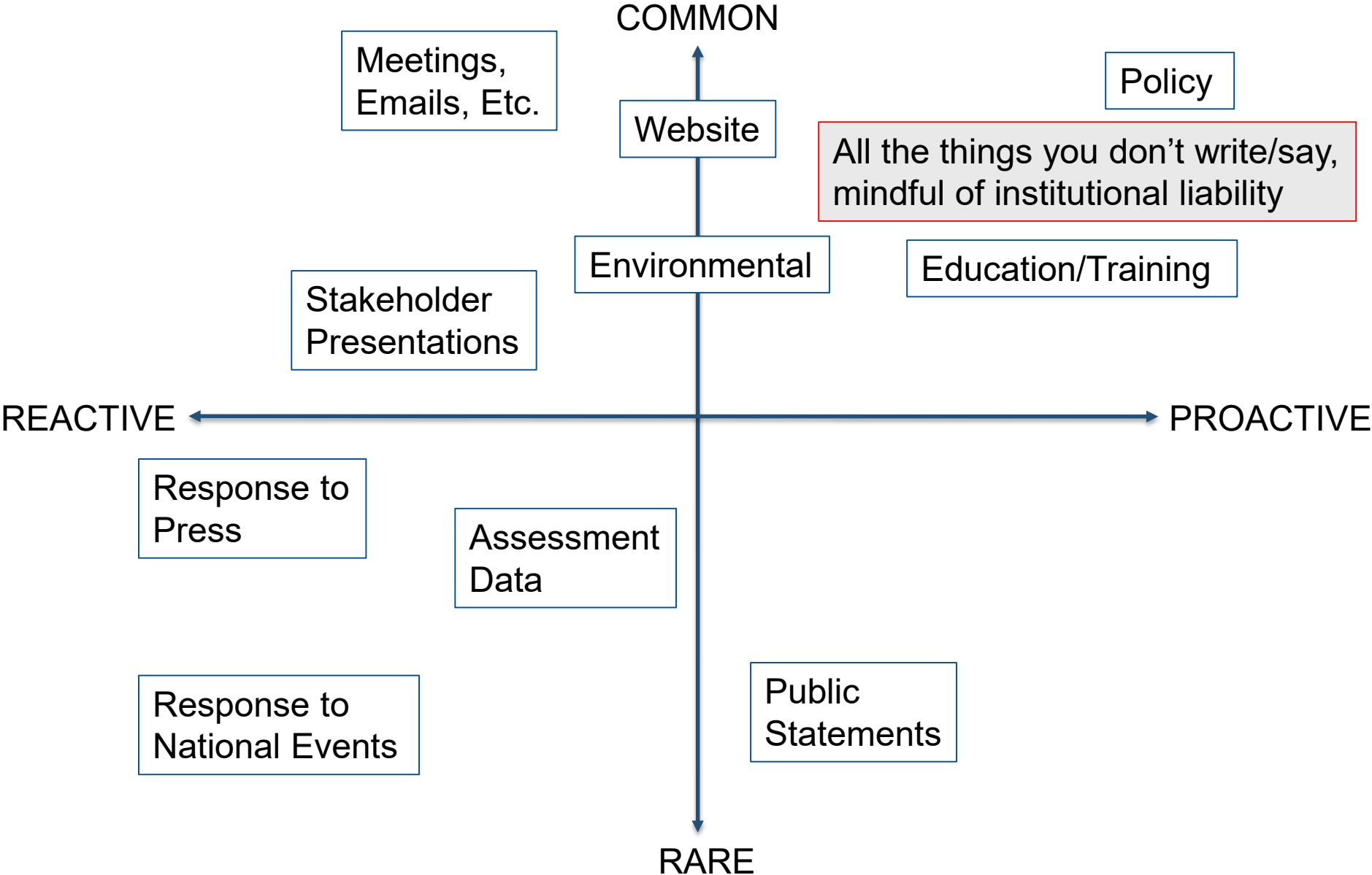


T9C in middle of competing obligations:

- 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)



# 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)



# STRUCTURAL LENS: ENTERPRISE RISK MANAGEMENT

- “Sexual assault/Title IX” ranks 2<sup>nd</sup> in top reputational risks over past three years (behind “Campus climate”); also 2<sup>nd</sup> 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



# CHAT

**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**

(SustainNet, 2019)



# CHAT

**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.)**

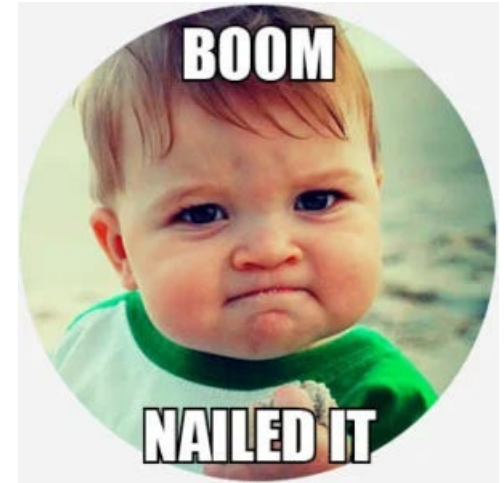


**FIGHT THE POWER**  
(wait...that's you)

**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**



# ACTIVITY

## 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.



# QUESTIONS

## ***REFRESH & RESET***

Based on what you learned yesterday, what resonated with you the most and why?



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# CONSIDERATIONS FOR PROCESSING STUDENT VS. FACULTY/STAFF CASES



# CHAT

## **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 (?)



## POLL

**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





# QUESTIONS

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# 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?



## Jurisdiction

Location

Program/Activity

Control Over Involved Parties



## Definitions of Prohibited Conduct

VAWA Crimes

Quid Pro Quo

Severe, Pervasive, and Objectively Offensive



## 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

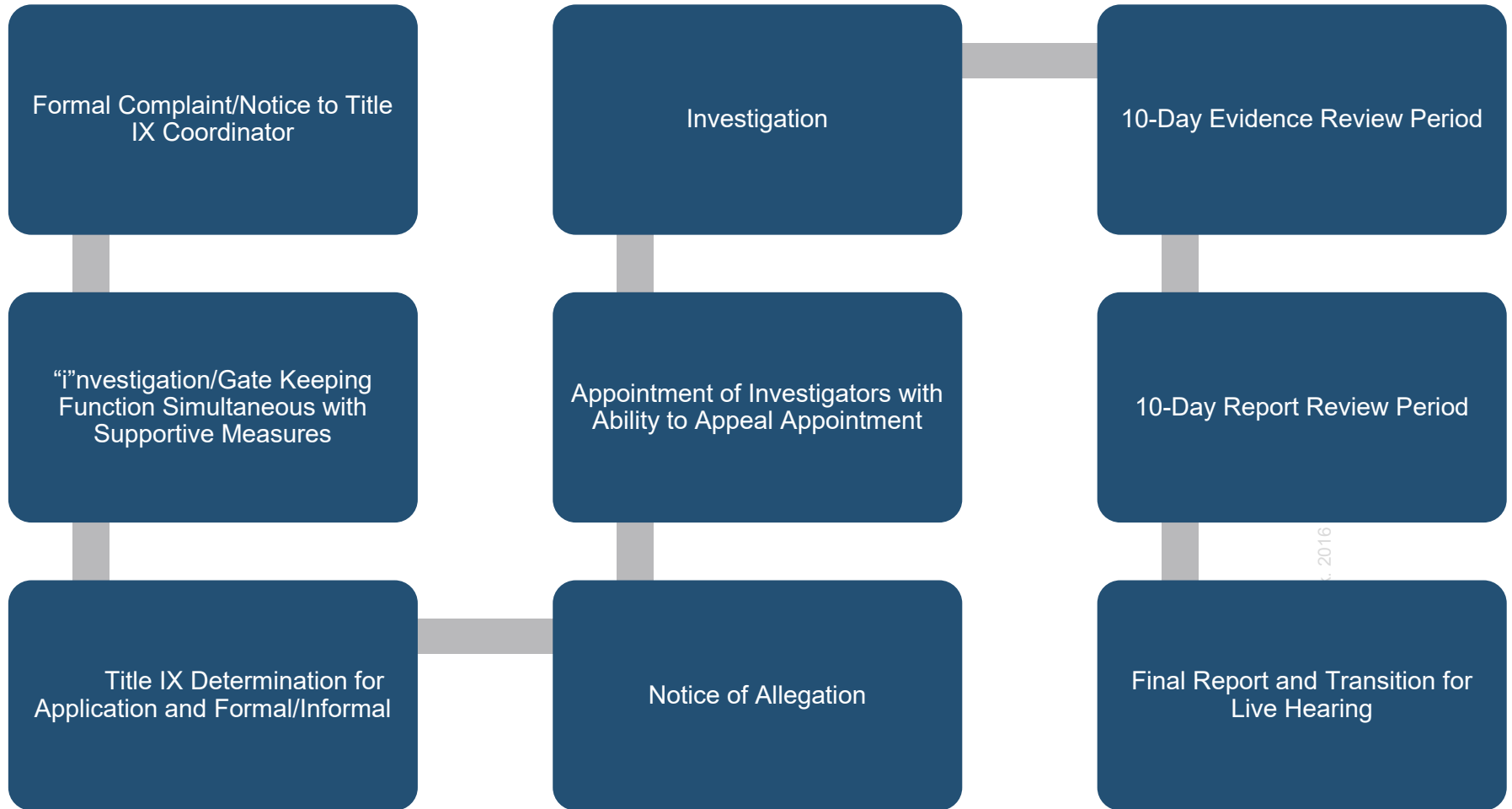





## POLL

**How is your institution  
managing complaints that  
fall outside the Title IX  
Coordinator's jurisdiction?**


# OVERVIEW OF AN INVESTIGATION



# 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 Preponderance of the Evidence or Clear and Convincing
-  Write a detailed investigative report

# 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





## POLL

**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



# DURING THE INTERVIEW: DIFFERENTIATING THE ROLE OF THE INVESTIGATOR FROM COORDINATOR

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

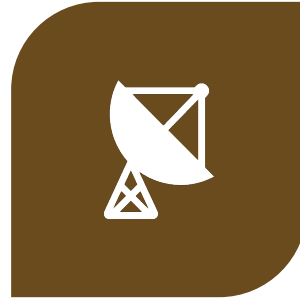


Recommendations?

# 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



# CHAT

## **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?



# QUESTIONS

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## COMPLEX CASE STUDIES



1



### ACTIVITY

## 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).



2



## TAKEAWAYS

**Case Study Large Group  
Share-Out ...(if time allows)**

3



## RESOURCE

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

<https://system.suny.edu/sci/tix2020/>

4



## QUESTIONS

5



## EVALUATION

### Thank you!

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



6