

Title IX Overview and Expectations for Title IX Coordinators, School Leaders, and Districts





Courtney Bullard

**Owner/Founder of
Institutional Compliance
Solutions**

- Attorney
- Practitioner

Agenda/ Overview

- New Title IX Regulations Overview
- Action Items for Title IX Coordinators, Title IX Teams, and District Leadership



Title IX



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 education program or activity receiving Federal financial assistance.



Title IX

IS



Discrimination based on Gender/Sex

- pregnancy discrimination
- gender equity in programming/athletics
- sexual harassment



Focus of New Regulations: SEXUAL HARASSMENT

1. Quid Pro Quo,
2. Severe, pervasive, and objectively offensive
3. Sexual Assault, Dating Violence, Domestic Violence, Stalking

IS NOT



Other types of discrimination

- Age
- race
- religion
- national origin
- disability
- other

How is Title IX Enforced?



**Office for Civil
Rights**



Courts

How Did We Get Here?



2011 Title IX Guidance

Dear Colleague Letter

2015 Title IX Guidance

Dear Colleague Letter on
Title IX Coordinators

2018 Notice of Proposed Rulemaking

To Amend Title IX Regulations

August 14, 2020

Implementation Deadline
for New Title IX Regulations

2001 Title IX Guidance

Revised Sexual Harassment
Guidance

2014 Title IX Guidance

Q & A on Title IX & Sexual Violence

2017 Title IX Guidance

Dear Colleague Letter Withdrawing
2011 and 2014 Guidance

May 6, 2020

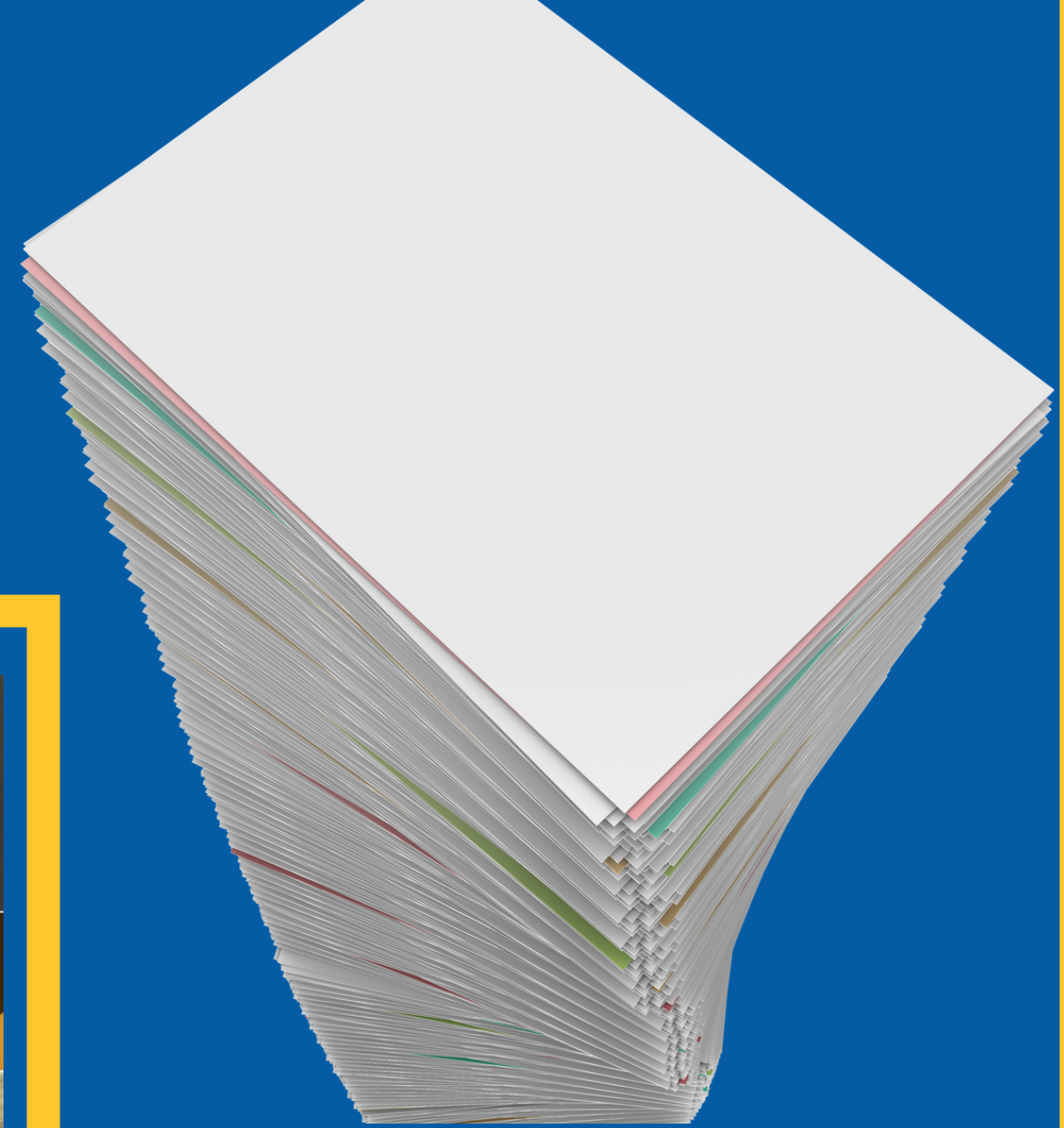
Title IX Regulations

Equitable Process

From Reported Sexual Harassment to Resolution and Appeal



Title IX Regulations 34 CFR §106



**Preamble +
Regulations=
2033 Pages**

REGULATIONS VS. GUIDANCE

[The] final regulations represent the Department's interpretation of a recipient's legally binding obligations, rather than best practices, recommendations, or guidance... [and] focus on precise legal compliance requirements governing recipients. p. 18



No One Has Done This Before!

We are ALL in This TOGETHER!

- Have a Plan but Remain Flexible
- Schedule Team Meetings
- Practice
- Smooth Transitions
- Language Matters
- Mistakes WILL HAPPEN



CHANGES AND REQUIREMENTS

OVERVIEW



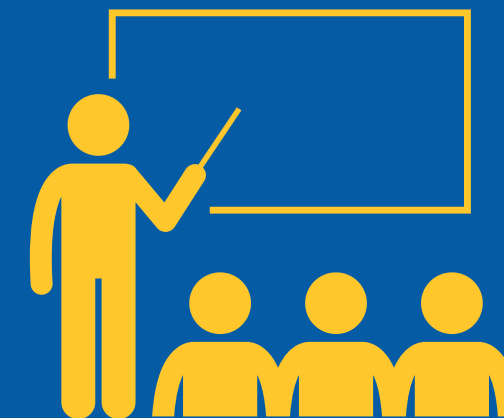
**Prescriptive
Title IX
Process**



**Officials
with
Authority**



**Policies
and
Procedures**



**Team
and
Training**



**Coordinator
with
Authority**

Title IX Team



Coordinator

1

Investigator

May be the same as the Title IX Coordinator

2

Decision-Maker

May NOT be the same as the Title IX Coordinator OR Investigator

3

Appellate Decision-Maker

May NOT be the same as the Title IX Coordinator, Investigator, OR Decision-Maker

4

Informal Resolution Facilitator

May be the same as the Title IX Coordinator (ONLY if policy allows for Informal Resolutions)

ROLE OF TITLE IX COORDINATOR

- Build a Title IX Team
- Coordinate training for Title IX Team and all employees
- Coordinate response to all complaints involving Sexual Harassment
- Provide and track Supportive Measures
- Monitor investigations, resolutions, outcomes, remedies and sanctions
- Monitor patterns and trends
- Avoid conflicts of interest and biases
- Update policies and procedures
- Recordkeeping

©Institutional Compliance Solutions 2020 All Rights Reserved



The recipient of a report of sexual discrimination must inform the Title IX Coordinator regardless of who will conduct the investigation.

INVESTIGATOR

- Notice of Allegations (if not done by Title IX Coordinator)
- Notice of Meetings with sufficient opportunity/time to prepare
- Investigation meetings
- Collects evidence/information (inculpatory and exculpatory)
- Provides information/evidence directly related to allegations to parties for review (10 days prior to report)
- Writes report summarizing relevant evidence
- Provides report to parties for review (10 Days)



DECISION-MAKER

- Question and Answer
 - Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
 - Hearing?
 - Written Determination regarding Responsibility/Sanctions/Remedies

APPELLATE DECISION- MAKER

- *Understand District Specific Process*
- *Review Appeals*
- *Make Timely Decisions and Simultaneous Notifications*





INFORMAL RESOLUTION FACILITATORS

- Meet with students, parents, advisors and facilitate resolutions after Formal Complaint and before determination regarding responsibility
- Informal Resolutions are not required but if using them, facilitators must be trained
- No Informal Resolution for Employee on Student cases

Officials with Authority

- ALL employees are responsible for reporting at K-12 level
- Actual Knowledge = NOTICE
- Notice without action = deliberate indifference





TRAINING

REQUIRED

- Title IX Coordinator (robust), Investigators, Decision-Makers, Informal Resolution Facilitators, Appellate Decision-Makers
- Decision-Makers- additional training on technology issues
- All Employee Training related to reporting obligations (Highly Recommended)



ADVISORS

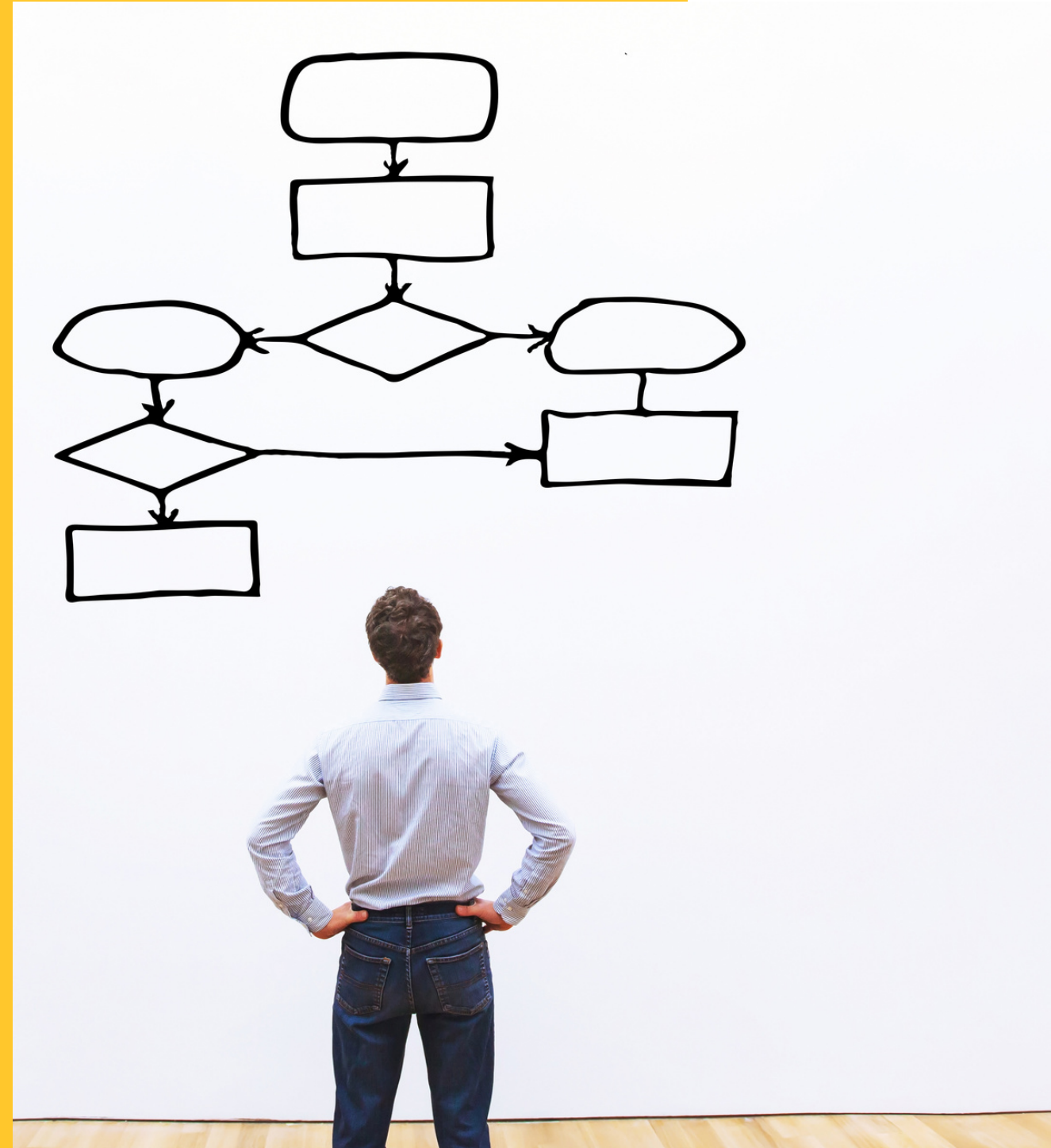
- Of choice
- Can be an attorney, doesn't have to be
- Your policy defines how they can be involved in your process
- Challenges with advisors
- Benefits to advisors



PARENTS / GUARDIANS

“While elementary and secondary school students retain less control over when disclosure of sexual harassment triggers the school’s mandatory response obligations, these students (with involvement of their parents as appropriate) do retain control over whether to accept supportive measures, and whether to also file a formal complaint.”

Formal Title IX Grievance Process



Title IX Applies To:



Students



Employees

**Student on Student
Sexual Harassment**

**Employee on Employee
Sexual Harassment**

**Student on Employee
Sexual Harassment**

**Employee on Student
Sexual Harassment**

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



"Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

Sexual Assault



Rape

Statutory Rape

Fondling

Incest

Location Matters...



**Sexual
Harassment**



**Education
Program or
Activity**



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

Defined Terms in New Regulations

Complainant

**Actual
Knowledge**

Respondent

Formal Complaint

**Supportive
Measures**

**Sexual
Harassment**



SUPPORTIVE MEASURES

Significant Focus Under New Regulations

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

- counseling,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,
- campus escort services, mutual restrictions on contact between the parties,
- changes in work or housing locations,
- leaves of absence,
- increased security and monitoring of certain areas of the campus, and
- other similar measures.

FORMAL TITLE IX GRIEVANCE PROCESS

1

**Report of
Sexual
Harassment**

2

**Formal
Complaint
+
Notice of
Allegations**

3

Investigation

- Review/
Response to
Directly Related
Evidence
- Review/
Response to
Written Report

4

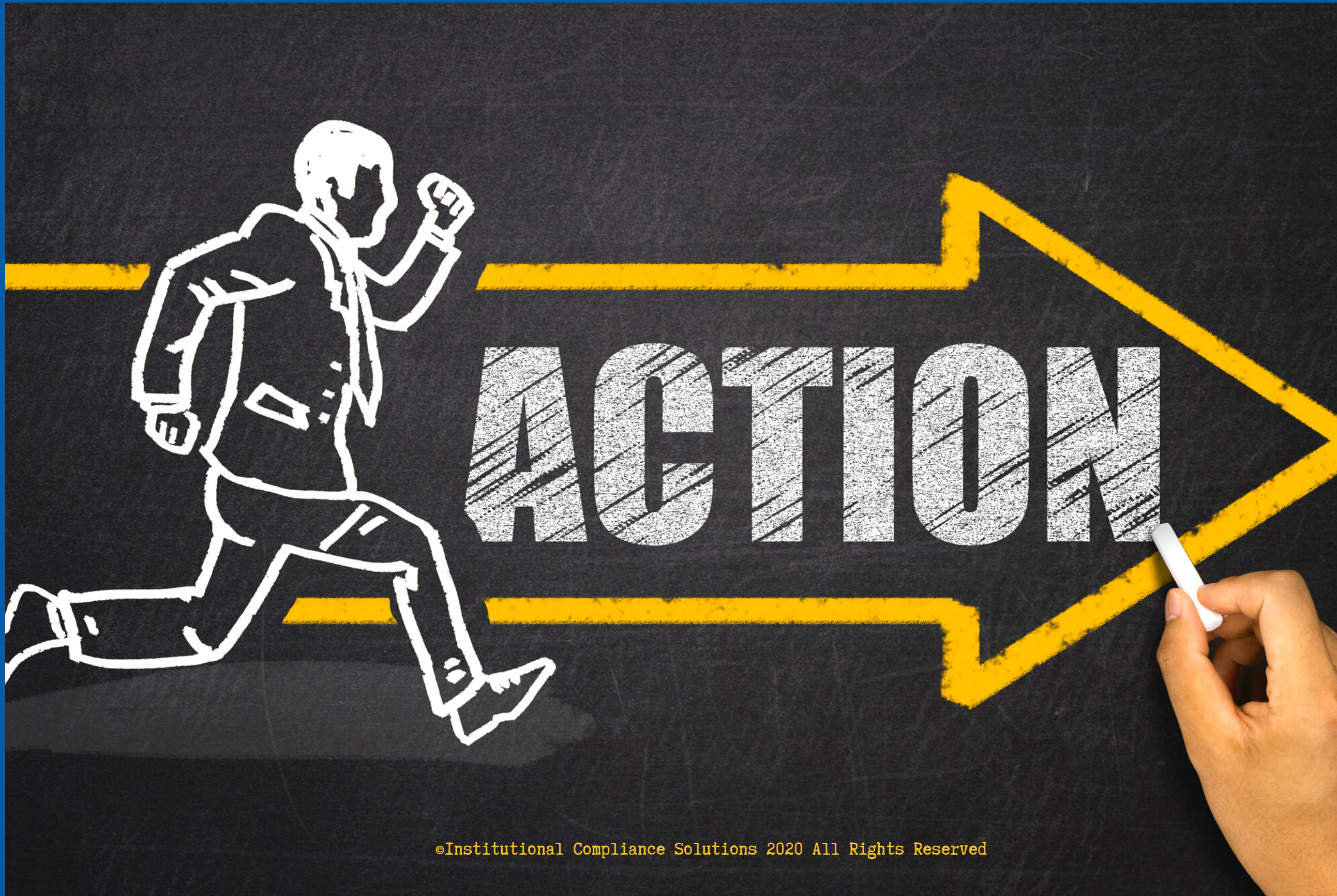
Resolution

- Written
Question
and Answer

5

Appeal

Putting the Regulations into Practice...



©Institutional Compliance Solutions 2020 All Rights Reserved





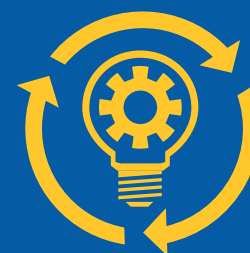
1

Policy



2

Training



3

**Effective
Implementation**

Compliance



THREE STEPS TO TITLE IX COMPLIANCE

TITLE IX COORDINATOR NEW REGULATIONS CHECKLIST:

IDENTIFY ALL AREAS FOR POSTING	ANALYZE/ NON-TITLE IX MISCONDUCT	APPOINT ROLES AND CONDUCT TRAINING	DETERMINE YOUR TITLE IX PROCESS	PREPARE YOUR TEAM AND DISTRICT	IDENTIFY OFFICIALS W/ AUTHORITY
<ul style="list-style-type: none">• Process/Policy• Notice of non-discrimination• Title IX Coordinator's Contact Information	<ul style="list-style-type: none">• How District will handle non-Title IX Misconduct	<ul style="list-style-type: none">• Coordinator• Investigator(s)• Decision-Maker(s)• Appellate Decision-Maker(s)• Informal Resolution Facilitator(s)	<ul style="list-style-type: none">• For Students• For Employees• Hearing?• Informal Resolution	<ul style="list-style-type: none">• Flowcharts• Forms• Timelines• Tracking spreadsheets	<ul style="list-style-type: none">• Trainings• Expectations• Sanctions/discipline for failure to report

DISTRICT LEADERSHIP ACTION ITEMS



1

**Title IX
Resources
Staffing and \$\$**



2

**Support/Authority
for Title IX
Coordinator**



3

**Understand
Complexities of
Requirements**



4

**Training if
Decision-Maker/
Appellate**



5

Assist as Needed

This is NOT everything...

- Emergency Removal
- Cross over with IDEA/ADA and other Federal Laws
- Breakdown of the responsibilities of each role
- Process Deep Dive
- Conflicts of Interest
- Recordkeeping
- Publishing/Distributing Policies

What else?

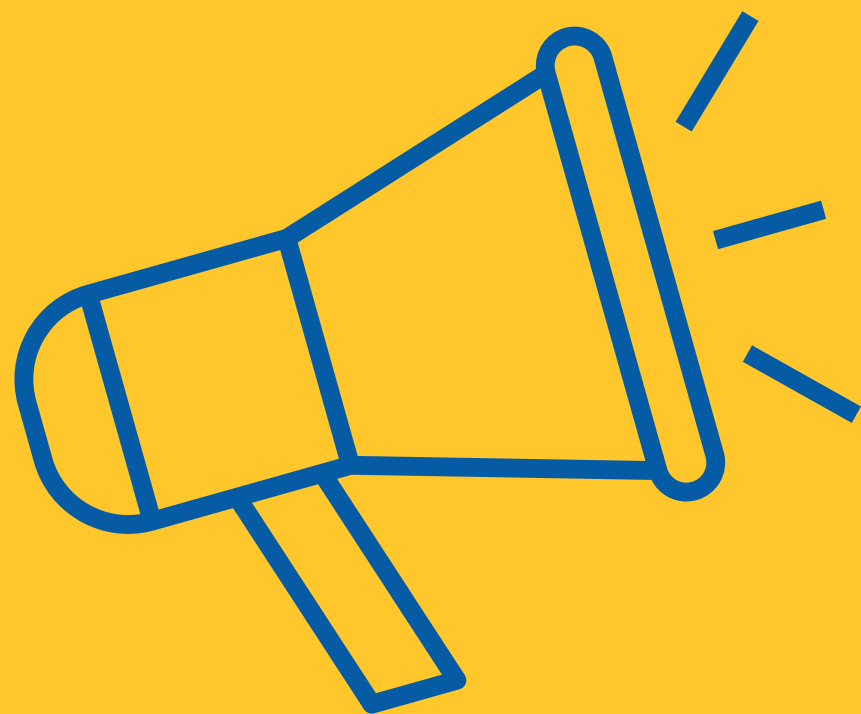
Office for Civil Rights Focus on K-12

February 2020

"The number of K-12 sexual harassment and violence complaints filed with OCR is nearly fifteen times greater than it was a decade ago. This disturbing change is a matter of serious concern and requires immediate attention,"

"Secretary DeVos has directed OCR to focus our enforcement, technical assistance, and data-gathering activities on this issue, and we are going to make it a priority going forward."

- Assistant Secretary for Civil Rights Kenneth L. Marcus.



OCR's initiative to examine sexual assault (at K-12 level) will include the following activities:

Compliance Reviews

OCR will conduct nationwide compliance reviews in schools and districts, examining how sexual assault cases are handled under Title IX, including sexual incidents involving teachers and school staff.

Public Awareness and Support

OCR will focus on raising awareness of the issue of sexual assault in K-12 schools, including making information available to educators, school leaders, parents and families

Data Quality Reviews

OCR will conduct Data Quality Reviews (DQRs) of the sexual assault/offenses data submitted by school districts

Proposed Civil Rights Data Collection

OCR has proposed to collect more detailed data on sexual assault.





What We Are Seeing:

- Policies missing important (and required) deadlines/timeframes
- Need for templates
- Districts missing required steps in the process
- Second prong (bucket) pain point
- Inability to call in Respondents prior to investigation vs. supportive measures implementation
- Conversations around Reports/Formal Complaints

"Living the Regs"

How Can We Help?



1

COMMUNITY
ACCESS



2

TAILORED
TRAINING



3

ONGOING
SUPPORT

Website:
ICSLAWYER.COM

Virtual Training Discount Code:
FLDOE

For More Information about Training
and Community Access,
Contact Christopher Simmons

christopher@icslawyer.com



Linkedin:
**Institutional
Compliance Solutions**

- Courtney Bullard
- Betsy Smith
- Celeste Bradley



Twitter:
@ICSLawyer



Instagram:
@TitleIXLawyer



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

CONNECT WITH US!





QUESTIONS
