



Title IX Coordinator Compliance Certification (K-12)

Session 4: Case Studies and Compliance Audits

Presented by: Richard F. Verstegen



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Overview



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Case Studies

- On-Campus Discrimination
- Off-Campus Harassment
- Sexual Assault

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Working With Law Enforcement

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III

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Study

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Case Studies



Case Study

- **Discrimination – athletics**
 - The district chooses a new girls softball coach, who is a current teacher in the district.
 - The district had received other applications, but the district believed that the current teacher would be a good fit for the position.
 - A parent is very upset with this selection, arguing that the boys baseball team has more competent and experienced coaches, and therefore the district is violating Title IX because it has failed to provide the girls with the same type of coaching.
 - The parent wants to file a complaint.

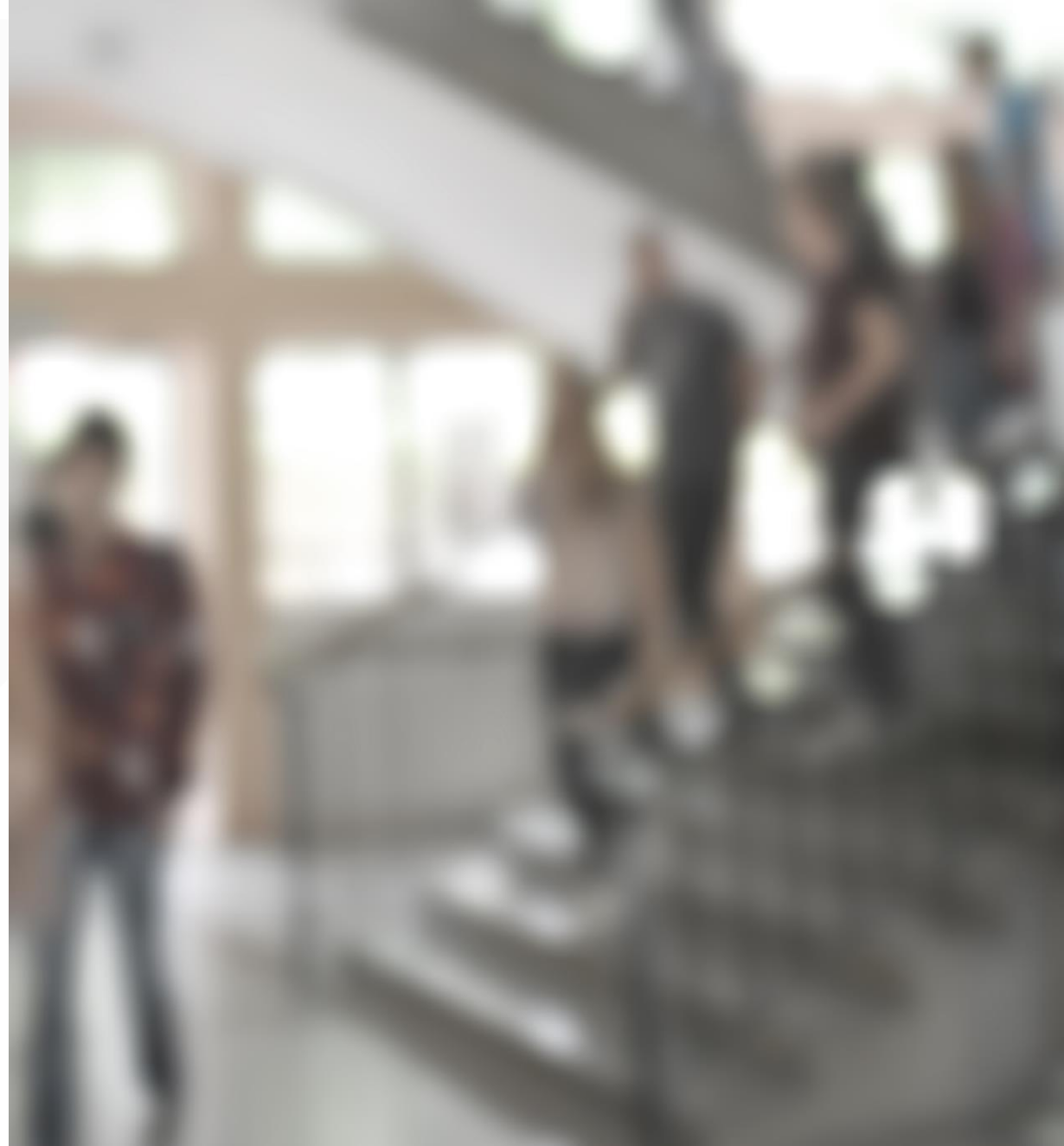
Poll Question

- **How should the District handle this issue?**
 - A. Inform the parent of the ability to file a complaint under your Title IX grievance procedure
 - B. Inform the parent of the ability to file a complain under your Title IX grievance process
 - C. Inform the parent that we are not going to address these types of issues
 - D. Do nothing



Case Study

- **Harassment – in school**
 - A staff member observes an exchange between a boy and girl in the high school hallway. The boy tells the girl, “Here comes the hottest thing in this hallway. Looking good as always Maddy!” The girl responds, “Shut up, Jake!” The boy responds, “Ok, but I’m great kisser. Text me.” The girl responds, “Cut it out. We’ll see you later.”
 - The staff member has never observed any similar conduct by Jake in the past.
 - The staff member wonders whether to report this conduct.



Poll Question

- **Must the staff member report this conduct to the Title IX Coordinator as Title IX harassment?**
- Yes
- No
- Not sure





Case Study

- **Harassment – in school**
 - A female high school student meets with an academic advisor. She tells the advisor that she broke up with her ex-boyfriend about a month ago, and he has been following her.
 - He cornered her that morning in an isolated stairwell of the school and said that he's been watching her all the time. He said he can't stand the thought of her dating someone else, and that if she doesn't stop hanging out with this new guy, someone is going to end up hurt.
 - The advisor reports this information to the Title IX Coordinator.

Poll Question

- **Must the advisor report this conduct to the Title IX Coordinator as Title IX harassment?**
- Yes
- No
- Not sure



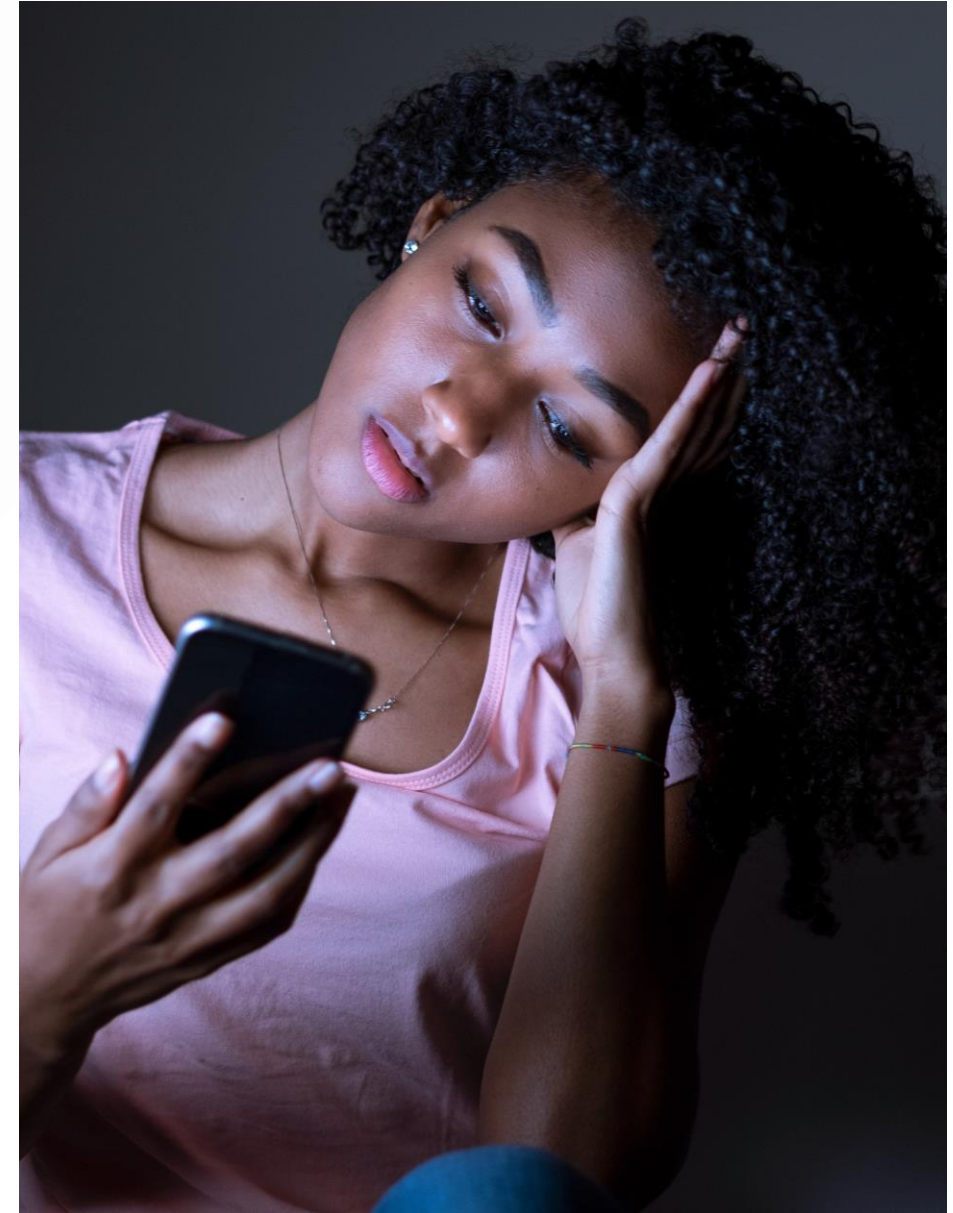
Case Study

- **Harassment – employment**

- A female employee reports that she overheard her supervisor state that “some days there is a too much estrogen in this office.” Three other women share the workspace. She reports this statement to the Title IX Coordinator. No action taken.
- During her evaluation, her supervisor meets with her and cites her need for improvement in certain areas. The female employee reacted by getting very upset and crying during the meeting. The supervisor then stated that “I know women can be emotional, but you’ve got to address this calmly and professionally.”
- The female employee believes the comments showed harassing conduct toward her. She reports this conduct to the Title IX Coordinator.

Case Study

- **Harassment – off campus**
 - A high school male student sends a Snapchat message to a high school female student after school hours. The Snapchat contains inappropriate sexual comments about the student and inappropriate images. It is sent after school and over personal devices.
 - In school the next day, the male student asks the female student about the Snapchat. The male student's friends have also been asking her about the Snapchat at school that morning and pressuring her to “hook up” with their friend.
 - The student reports this conduct to the high school principal who is not the Title IX Coordinator.





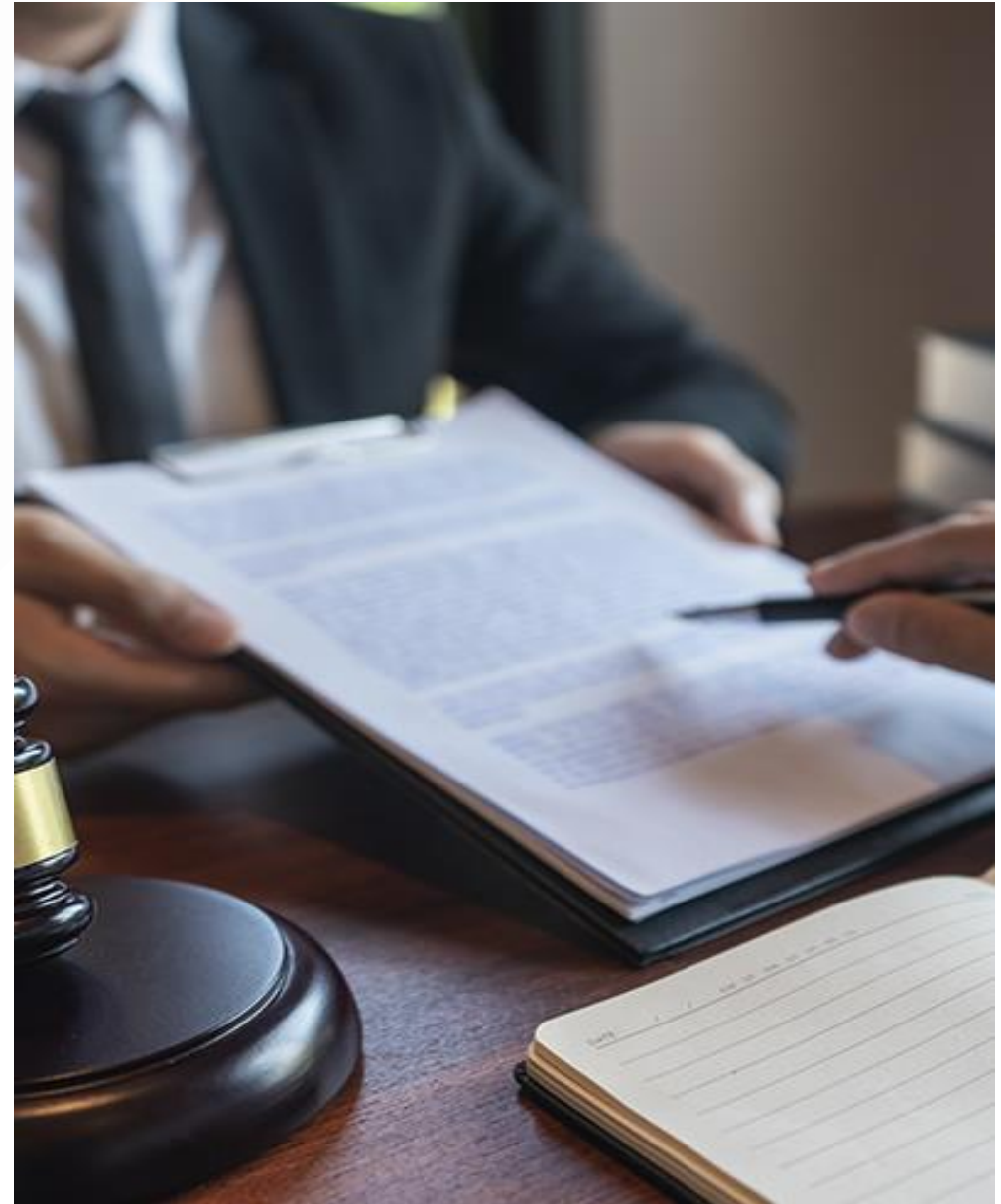
Complaints

Addressing Complaints

Addressing Complaints

Working With Law Enforcement

- An institution should notify complainants of the right to file a criminal complaint, if applicable.
- If applicable, an institution should work with law enforcement to learn when the evidence gathering stage of the criminal investigation is complete.
- A Title IX investigation will never result in incarceration.



Addressing Complaints – Retaliation

- No institution or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding or hearing.
- Intimidation, threats, coercion, or discrimination (including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sexual discrimination, or a report or formal complaint of sexual harassment), for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Addressing Complaints – Retaliation

- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under Title IX.
- The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation (provided however that a determination regarding responsibility, alone, is not sufficient to conclude that a party made a materially false statement in bad faith).

Addressing Complaints – Confidentiality

- An institution must keep confidential the identity of any individual who made a report or complaint of sex discrimination (including any individual who has made a report or filed a formal complaint of sexual harassment), any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness.
- This confidentiality applies except as may be permitted by FERPA, or as required by law, or to carry out the purposes of Title IX (including the conduct of any investigation, hearing, or judicial proceeding arising thereunder).

Addressing Complaints – First Amendment

- **Consider First Amendment issues.**
 - In cases of alleged harassment, the First Amendment must be considered if issues of speech or expression are involved.
 - First Amendment rights may apply to the rights of complainants, respondents, or third parties.





Addressing Complaints – FERPA

- **Consider student records issues.**
 - There will need to be a balance between confidentiality of student records and due process considerations.
 - Institutions may need to disclose evidence as part of the process which may bring concerns with disclosure of confidential student records.

Addressing Complaints – Recordkeeping

- For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:
 - Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
 - The institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity.

Addressing Complaints – Recordkeeping

- **For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:**
 - If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
 - The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

Addressing Complaints – Recordkeeping

- An institution must maintain for a period of seven years the following records:
 - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
 - An institution must make these training materials publicly available on its website.





Compliance Review



Compliance Review

- **Focus of review**
 - Content of your policies and forms
 - Training provided by the District on sexual violence
 - Knowledge of various individuals who are responsible for investigating such sexual violence issues, and
 - Overall application of the policies on sexual violence incidents

Compliance Review

- **Key questions**
 - When you receive a report, what steps do you take? Do you notify the alleged target or his/her parents?
 - When you receive a report, what sort of steps do you take to prevent recurrence of the alleged sexual harassment? Do you consider changes to the interim measures during the course of the investigation? How do you monitor these interim measures?
 - When you conduct your investigation, do you allow the alleged perpetrator to have a representative present? Do you approach such investigations in an objective and impartial manner?





Compliance Review

- **Key questions**
 - Based on the alleged conduct, at what point do you contact law enforcement? At what point do you resume your investigation?
 - When you receive a report of alleged sexual violence, do you report such conduct as alleged child abuse?
 - When you receive allegations of inappropriate behavior by students or staff, do you follow up on such allegations?

Compliance Review

- **Key questions**
 - After completing an investigation, how do you document your final outcome or conclusions?
 - After completing your investigation, do you follow up with the victim or perpetrator to determine whether there has been any recurrence?
 - In what circumstances do you recommend discipline for any sort of sexual violence?





Compliance Review

- **Review of policies**
 - Interim steps;
 - Evidentiary standard;
 - Definitions of sexual harassment;
 - Reporting policies and protocols;
 - Potential remedies for student victims and potential sanctions for perpetrators;
 - Sources of counseling, advocacy, and support; **and**
 - Notice of prohibition of retaliation.

Compliance Review

- **Review of personnel**
 - Specific training that they have received on the sexual harassment and violence policies;
 - Knowledge of the policies and forms in the District; **and**
 - Application of these policies and forms in specific matters in the District.






Compliance Review

- **Possible issues**
 - Referral of matters to others;
 - Investigations of issues consistent with policies;
 - Interim measures considered, but mostly with alleged perpetrator;
 - Filling out forms in a meaningful manner; **and**
 - Delay in investigation or resuming investigations, when law enforcement involved.

Compliance Review

- **Revisions to various policies**
 - Designating coordinators
 - Notice of non-discrimination
 - Grievance procedures
 - Determination of harassment





**FINAL
THOUGHTS**

Conclusion

Conclusion

- **Need to consider how to work with law enforcement**
- **Need to maintain and create records as necessary**
- **Need to consider other requirements, including retaliation and First Amendment**





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Attorney

Questions?



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