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**Title IX Coordinator
Certification K-12**

Session 1: Title IX Roles and Responsibilities

Presented by: Richard F. Verstegen



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2/13/23

1:30-3:00

Overview

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Introduction

- Scope of Discussion
- Impact of Regulations

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Introduction

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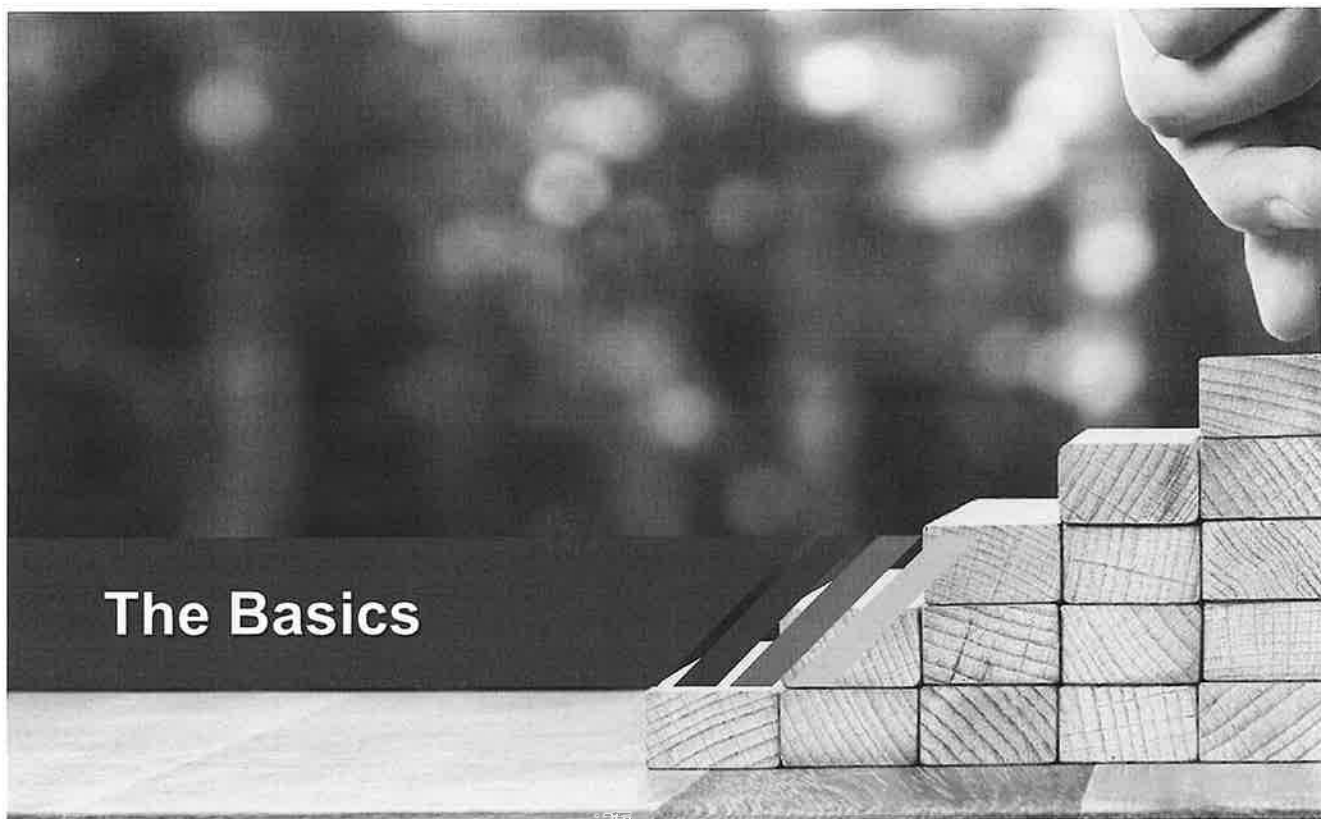


Introduction

- Discrimination Based on
 - Sexual Harassment
- Trump Administration
 - U.S. Supreme Court
 - Due Process
 - Regulations
- 2020 Amendments to Title IX Regulations (Trump)
- 2022 Proposed Amendments to Title IX Regulations (Biden)

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The Basics

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History Leading to Title IX

Road to Title IX

- Protections for women gained significant momentum from the racial movement of the 1960s
- After the Civil Rights Act of 1964, women's rights activists sought greater protection in the 1970s
- In 1970, Representative Edith Green (D-Ohio) drafted legislation prohibiting sex discrimination in education
- In 1972, Title IX was enacted.



The Law

- **Title IX**
 - No person in the U.S. 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 Regulations**
 - 34 C.F.R. 106
- **Enforced by Office of Civil Rights/state education agencies**



Application of Title IX

Scope of Title IX

- All public and private elementary and secondary schools, school districts, colleges and receiving federal funds ("recipients") must comply with Title IX.
- Application of Title IX is institution-wide.
- All students (as well as other persons) at recipient institutions are protected by Title IX.



Application of Title IX

Programs or Activities

General prohibition

- Except as provided elsewhere in this part, no person shall, on the basis of sex, be denied participation in, be denied the benefits of, or be subjected to discrimination under a program or activity of an institution of higher education that is a recipient which receives Federal financial assistance. 34 C.F.R. s. 106.31(a).



Application of Title IX

Programs or Activities

Specific prohibitions

- Except as provided in this subpart, an educational institution in providing any aid, benefit, or student, may not, on the basis of sex:
 - Treat one person differently from another in determining whether the person satisfies requirement or condition for the provision of any aid, benefit, or service;
 - Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
 - Deny any person such aid, benefit, or service;
 - Subject any person to separate or different rules of behavior, sanctions, or other treatment;
 - Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

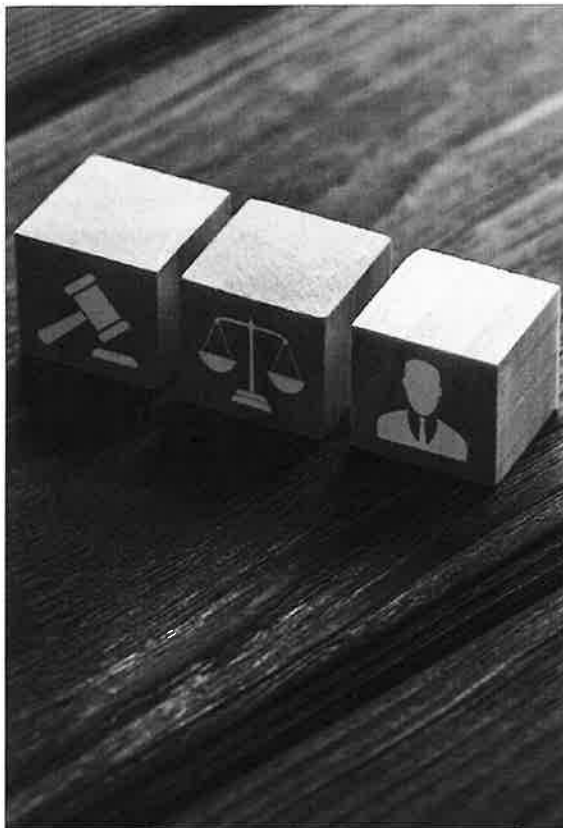
34 C.F.R. s. 106.31(b)

Application of Title IX

Discipline

- Title IX prohibits a recipient from subjecting any person to separate or different rules of behavior, sanctions, or other treatment, such as discriminatory discipline, based on sex.
- See Dear Colleague Letter, Nondiscriminatory Administration of Discipline, January 8, 2017.





Application of Title IX

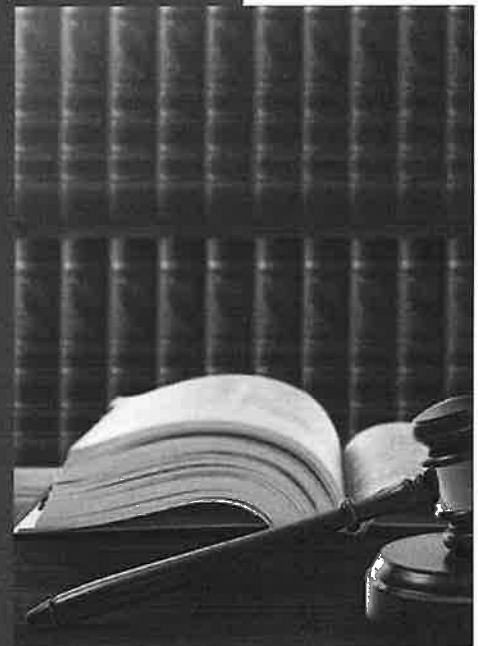
Employment and Benefits

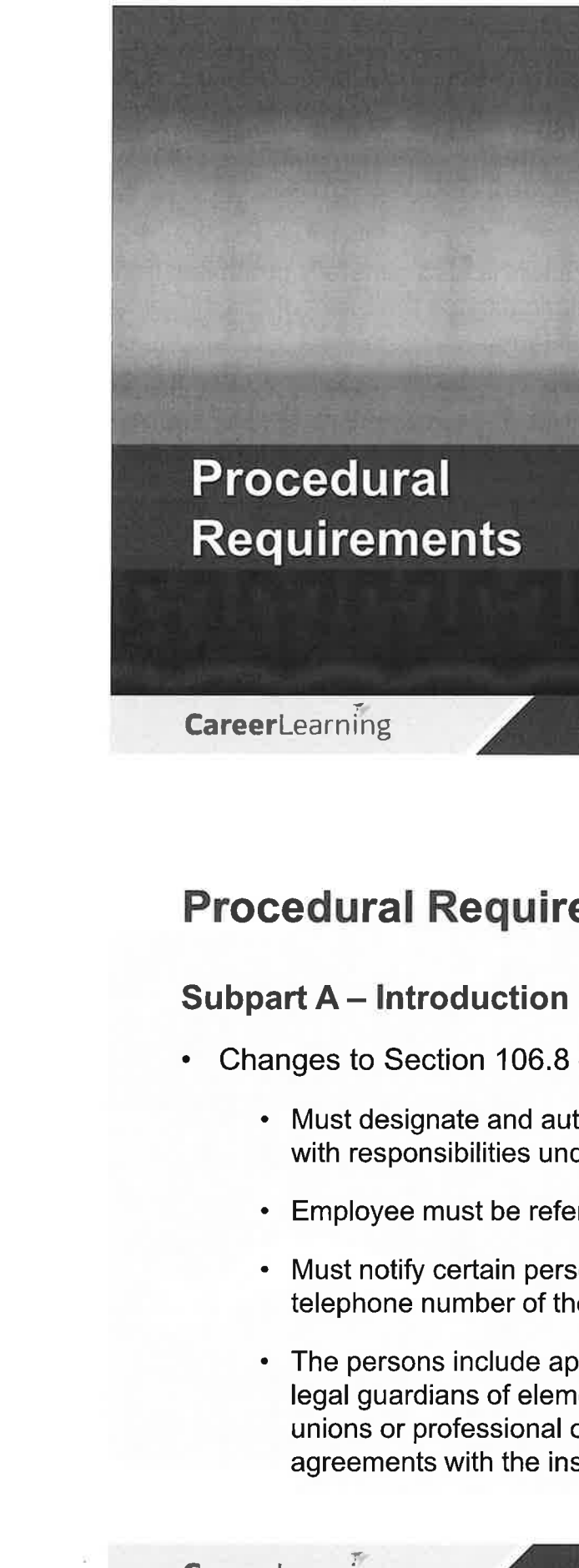
- A recipient is also generally prohibited from discriminating on the basis of sex in employment recruitment.
- This includes employment actions, such as promotion, compensation, grants of leave, and benefits.
- These provisions also protect against discrimination based on an applicant's or employee's pregnancy, marital or parental status.

Application of Title IX

Other Areas

- Single-sex education
- Pregnancy
- Sexual harassment
- Athletics





Procedural Requirements

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Procedural Requirements

Subpart A – Introduction

- Changes to Section 106.8 – procedural requirements
 - Must designate and authorize at least one employee to coordinate its effort with responsibilities under this part
 - Employee must be referred to as the “Title IX Coordinator.”
 - Must notify certain persons of the name or title, office address, email address, telephone number of the Title IX Coordinator
 - The persons include applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, unions or professional organizations, holding collective bargaining or professional agreements with the institution.

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Procedural Requirements

Subpart A – Introduction

- Changes to Section 106.8 – procedural requirements
 - Must disseminate a policy of non-discrimination
 - Must notify same persons (1) that the institution does not discriminate on the basis of sex in the education program or activity that it operates or sponsors and that it is required by Title IX and this part not to discriminate in such a manner
 - Must state in notice that this requirement not to discriminate extends to admission (if applicable) and employment
 - Must state in notice that inquires about the application of Title IX and may be referred to the Title IX Coordinator, the Assistant Secretary, or

Procedural Requirements

Subpart A – Introduction

- Changes to Section 106.8 – procedural requirements
 - Must follow publication requirements
 - Must prominently display the contact information for the Title IX Coordinator (discussed above) and the policy (discussed above) on:
 - Its website, **and**
 - In each handbook or catalog that it makes available to the persons (discussed above).
 - Must not distribute publication stating that the institution treats groups differently on the basis of sex, except as permitted under Title IX

Procedural Requirements

Subpart A – Introduction

- Changes to Section 106.8 – procedural requirements
- Must adopt and publish **grievance procedures** that provide for the prompt and resolution of student and employee complaints alleging any action that would be prohibited by this part
- Must adopt and publish a **grievance process** that complies with 34 CFR 106.4 complaints of sexual harassment
- Must provide persons (above) notice of the grievance procedure and grievance including how to report or file a complaint of sex discrimination, how to report or complaint of sexual harassment, and how the recipient will respond
- Applies only to sex discrimination occurring against a person in the U.S.

Grievance Procedure

Important Elements

- Notice to students and employees of the grievance procedures, including where complaints are filed
- Application of the grievance procedure to complaints filed by students or on their behalf regarding sexual violence carried out by employees, other students, or third parties
- Provisions for adequate, reliable, and impartial investigations of complaints
- Written notice to the complainant and alleged perpetrator of the outcome of the complaint
- Assurance that the institution will take steps to prevent recurrence of any sexual violence and any discriminatory effects on the complainant and others, if appropriate
- Designated and reasonably prompt time frames for the major stages of the complaint process





Grievance Process

Grievance Process Components

- Basic requirements
- Investigation
- Hearing (not required in K-12 S
- Determination regarding respor
- Appeals



Grievance Process – Basic Req

- **Must treat complainants and respondents equ**
 - Provide remedies to a complainant where a c of responsibility has been made against the r
 - Follow a grievance process that complies wit before the imposition of any disciplinary sanc actions against a respondent.
- **Require an objective evaluation of all relevant provide that credibility determinations may nc person's status.**
- **Require that any individual designated by an i a Title IX Coordinator, investigator, decision-r person designated to facilitate an informal res process not have a conflict of interest or bias.**



Grievance Process – Basic Requi

- Includes a presumption that the respondent is responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process.
- Includes reasonably prompt time frames for completion of the grievance process
- Must include process that allows for temporary suspension of a respondent for good cause with written notice to complainant respondent of the delay and the reasons for delay
- Good cause may include considerations such as the absence of a party, a party's advisor, or with concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities



Grievance Process – Basic Requirements

- Describe the range of (or list) possible disciplinary sanctions and remedies that the institution may implement following determination of responsibility
- State whether the standard of evidence to be used to determine responsibility is preponderance of evidence or clear and convincing evidence.
- Must apply same standard for formal complaints against students as for formal complaints against employees
- Must apply same standard to all formal complaints involving sexual harassment



Grievance Process – Basic Requirements

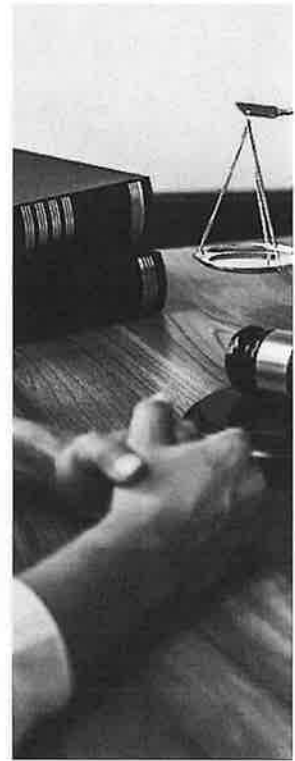
- Include the procedures and permissible actions for the complainant and the responder and appeal.
- Describe the range of supportive measures available to complainants and respondents.
- Must not require, allow, rely upon, or use questions or evidence that constitute information protected under a legally recognized privilege, unless person has waived privilege.



Responsibilities of Title IX Coordinator

Designating a Title IX Coordinator

- An institution must designate at least one employee to coordinate its efforts to comply with Title IX.
- An institution may choose to have a number of employees responsible for Title IX matters.
- However, it is advisable to give one official responsibility for overall coordination and oversight of sexual harassment complaints to ensure consistent practices and standards.



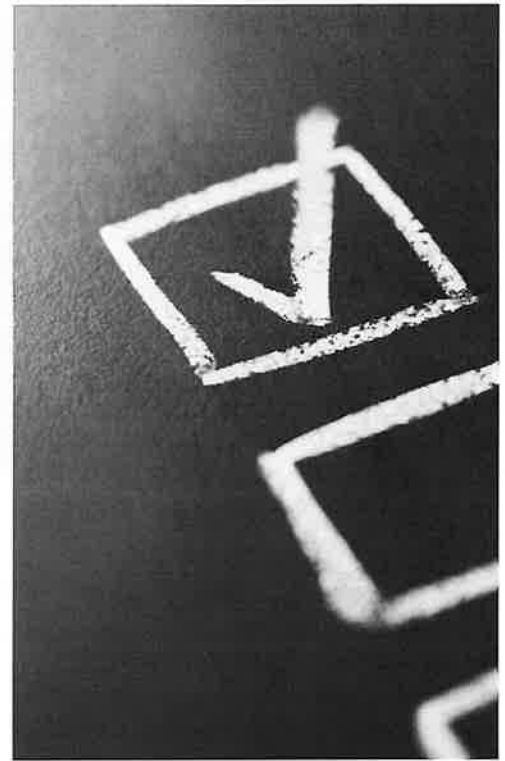
Title IX Coordinator Conflicts of Interest

Title IX Coordinator Role

- The Title IX coordinator's role is independent to avoid any potential conflict of interest.
- The Title IX coordinator should report to the institution's senior leader.
- Title IX does not categorically exclude employees from serving as Title IX coordinators. However, institutions should not select an employee whose responsibilities might create a conflict of interest.

Obligation to Title IX Coordinators

- Institutions have specific obligations to ensure that the Title IX coordinator is visible to the institution's community.
- Provide coordinators with access to information regarding incidents of sex-based harassment and other relevant information.
- Ensure that Title IX coordinators receive appropriate training and have thorough knowledge in the areas over which they have responsibility.



Title IX Coordinator Responsibilities

- Title IX coordinator responsibilities
- Coordinate institution's compliance with Title IX grievance procedures for resolving Title IX
- Coordinate institution's response to all complaints involving sex discrimination.
- Remain knowledgeable and updated about the institution's policies and procedures.
- Provide training and technical assistance on policies related to sex discrimination.
- Assist with surveying the school climate and information obtained from any survey.
- Monitor participation in athletics and across fields to identify disproportionate enrollment

Title IX Reporting

Reports of Discrimination/Harassment

- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment).
- Any person may report in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.



Title IX Reporting

Reports of Discrimination/Harassment

- A person may report sex discrimination, including sexual harassment, at any time (including during non-business hours) by using the telephone number or email address or by mail to the office address listed for the Title IX Coordinator.
- Notice of sexual harassment (actual knowledge) includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.



Title IX Complaints

Other Options

- File a complaint with OCR.
- Send a letter to OCR enforcement officer.
- Not required to use the school's grievance process before filing a complaint
- File a lawsuit in court claiming a violation; there is no need to file with OCR before filing a suit in court.



Recordkeeping Requirements

- **An institution must maintain for a period of seven years the following records:**
 - Each sexual harassment investigation including (1) any determination regarding responsibility and any audio or audiovisual recording or transcript, (2) any disciplinary sanctions imposed on the respondent, and (3) any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
 - Any appeal and the result therefrom;
 - Any informal resolution and the result therefrom; **and**





Recordkeeping Requirements

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

Recordkeeping Requirements

- 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.



Recordkeeping Requirements

- **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.



Training Required

- **An institution must ensure that Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution process must receive training on:**
 - The definition of sexual harassment
 - The scope of the institution's education program or activity
 - How to conduct investigations and the grievance process, hearings, appeals and informal resolution processes
 - How to serve impartially, including avoiding prejudgment of facts at issue, conflicts of interest, and bias

Training Required

- **An institution must ensure that decision-makers receive training**
 - Issues of relevance of questions and evidence, including when questions and evidence of the complainant's sexual predisposition or prior sexual behavior are not relevant
 - Any technology to be used at a live hearing
- **An institution must ensure that investigators receiving training cover**
 - Issues of relevance to create an investigative report that fairly summarizes evidence
- **Any materials must not rely on sex stereotypes and must promote impartial investigations and adjudications.**

Title IX Complaints

- **Policies need to consider**
- Interaction when claims also involve other protected classes (race, disability, etc.)
- Interaction with other state laws
- Interaction with overlapping federal laws (Title VII)
- Interaction with student code of conduct





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Conclusion

- Need to recognize roles & responsibilities
- Need to monitor activity & campus in all areas
- Need to maintain records all areas

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Questions?



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