



Title IX Certification (Higher Education) for Investigators and Decisionmakers

Session 4: Case Studies and Compliance Audits

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Case Studies

- Discrimination
- Harassment

II

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Study

Case

Case Studies





Case Study

- **Discrimination – athletics**

- The college chooses a new women's softball coach, who is a former player on the team.
- The college had received other applications, but the college believed that the former player would be a good fit for the position.
- A player is very upset with this selection, arguing that the men's baseball team has more competent and experienced coaches, and therefore the college is violating Title IX because it has failed to provide the women with the same type of coaching.
- The student wants to file a complaint.

Poll Question

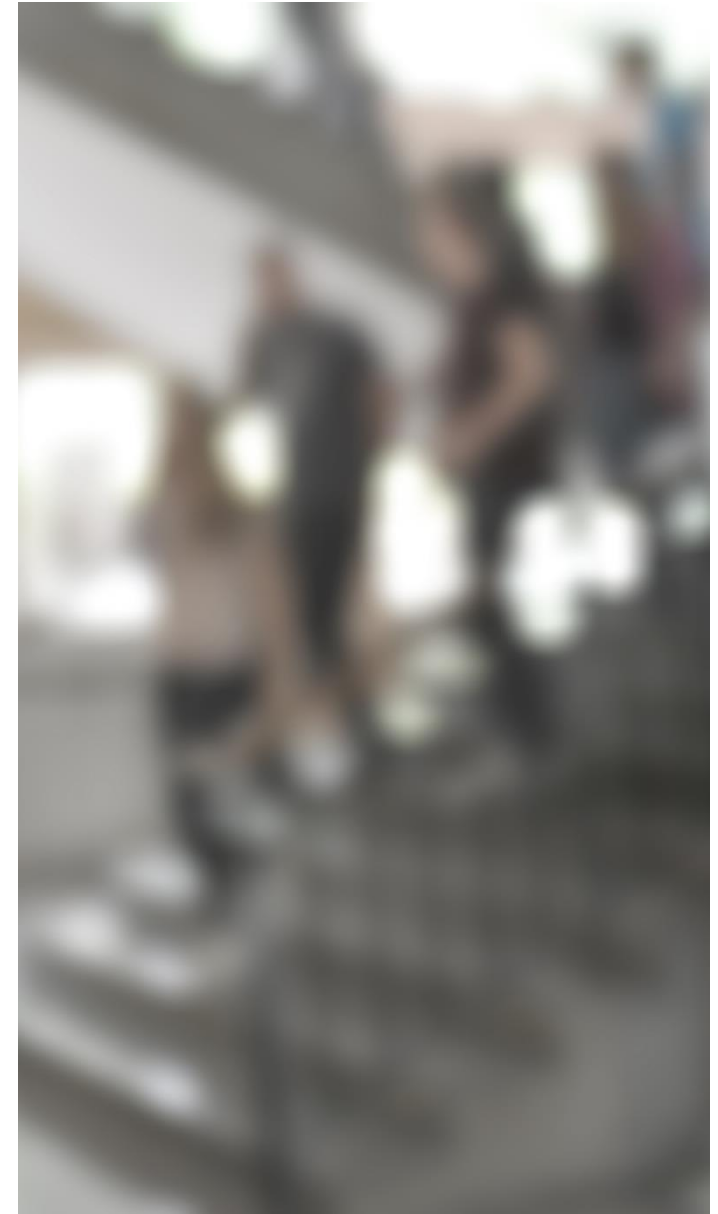
How should the school handle this issue?

- Inform the student of the ability to file a complaint under your Title IX grievance procedure
- Inform the student that Title IX does not allow students to bring a complaint
- Inform the student that Title IX does not apply to coaching decisions
- Do nothing



Case Study

- **Possible harassment – in school**
 - A professor observes an exchange between a male and female students in the hallway. The male tells the female, “Here comes the hottest thing in this hallway. Looking good as always Maddy!” The female responds, “Shut up, Jake!” The male responds, “Ok, but I’m a great kisser. Text me.” The female responds, “Cut it out. We’ll see you later.”
 - The professor has never observed any similar conduct by Jake in the past.
 - The professor 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 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'd 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

- **Pregnancy**
 - A staff member observes a posting on social media by a student.
 - The posting states: “If you do not see me in school over the next month, it is because I just found out that I am pregnant. I need to focus on myself and the baby. Appreciate all the support for my friends!”
 - The staff member has observed that this student has not been coming to school recently.
 - The staff member wonders whether to report this conduct.

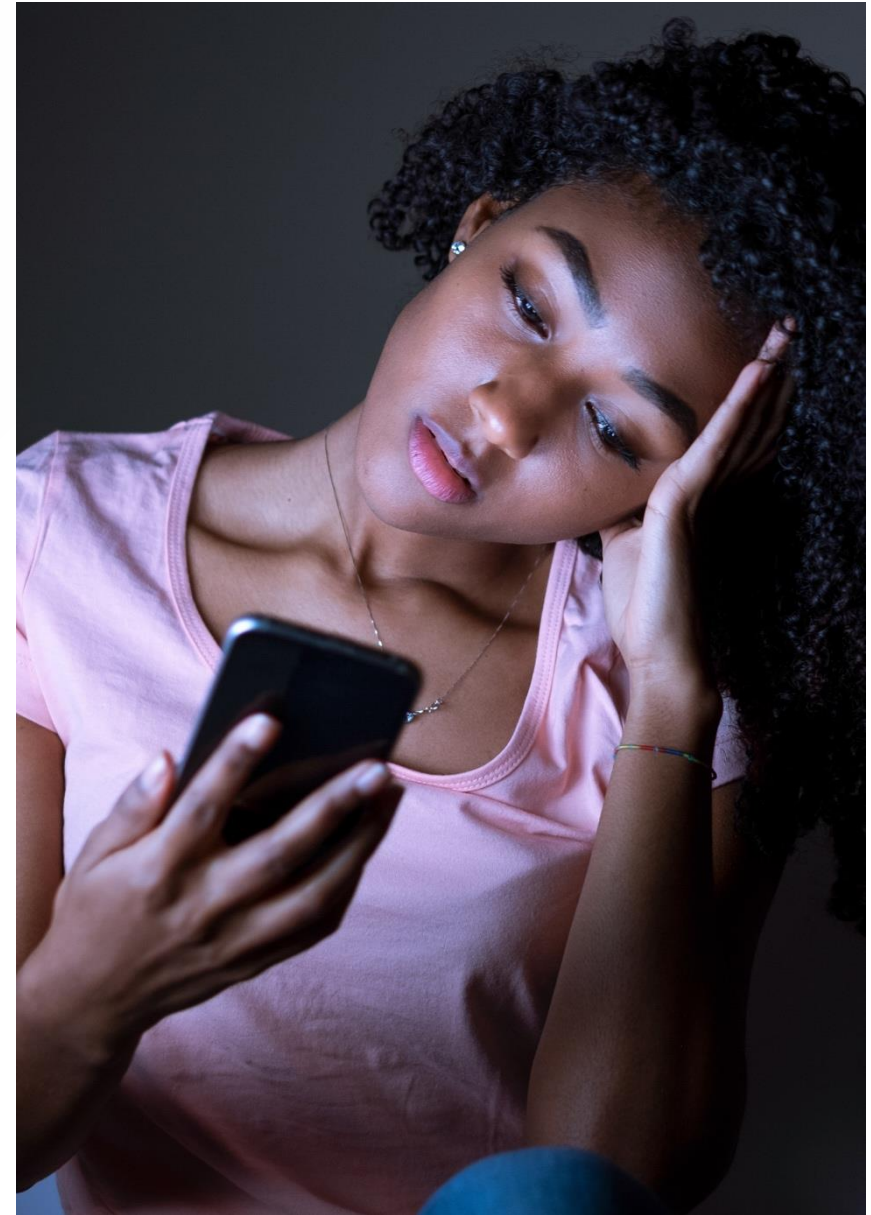


Case Study

- **Harassment – employment**
 - A female employee reports that she overheard her supervisor state that “some days there is too much estrogen in this office.” Three other women share the workspace. She reports this statement to the Title IX Coordinator. No action was 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, “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 male student sends a Snapchat message to a 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 dean of students who is not the Title IX Coordinator.





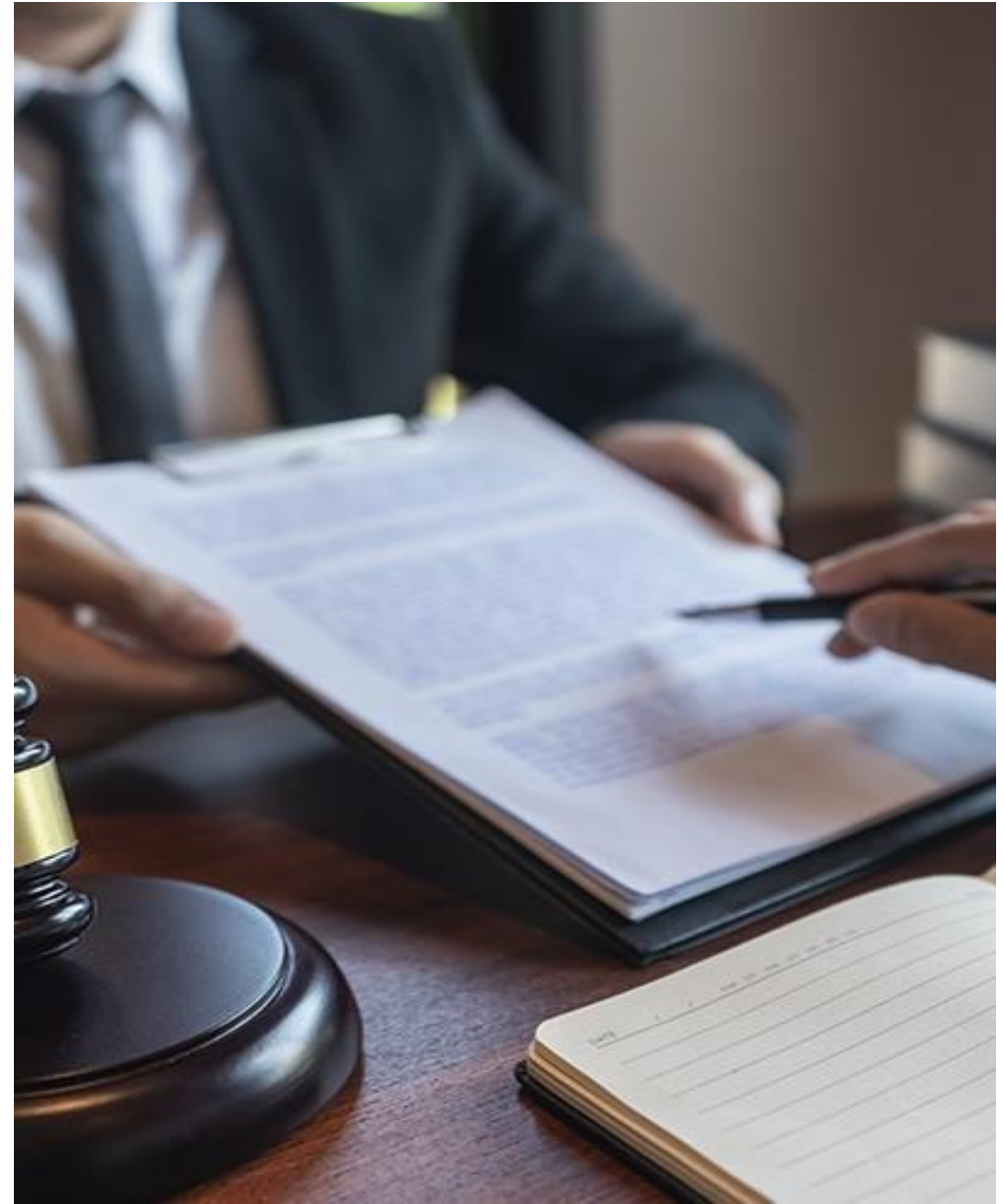
Complaints

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.



Recordkeeping Requirements

- **A recipient must maintain for a period of at least seven years:**
 - (1) For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.
 - (2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the recipient took to meet its obligations under § 106.44.
 - (3) All materials used to provide training under paragraph (d) of this section. A recipient must make these training materials available upon request for inspection by members of the public.

Prohibited Disclosure of PII

- A recipient must not disclose personally identifiable information obtained in the course of complying with this part, except in the following circumstances:
 - (1) When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
 - (2) When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
 - (3) To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the recipient's education program or activity;

Prohibited Disclosure of PII

- A recipient must not disclose personally identifiable information obtained in the course of complying with this part, except in the following circumstances:
 - (4) As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
 - (5) To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

Retaliation

- Retaliation means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1).

Retaliation

- Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.
- Peer retaliation means retaliation by a student against another student.

Retaliation

- A recipient must prohibit retaliation, including peer retaliation, in its education program or activity. When a recipient has information about conduct that reasonably may constitute retaliation under Title IX or this part, the recipient is obligated to comply with § 106.44. Upon receiving a complaint alleging retaliation, a recipient must initiate its grievance procedures under § 106.45, or, as appropriate, an informal resolution process under § 106.44(k). As set out in § 106.45(e), if the complaint is consolidated with a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures initiated by the consolidated complaint must comply with the requirements of both §§ 106.45 and 106.46.

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.



Compliance Review



Compliance Review

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

Compliance Review

- **Key questions**
 - When you receive a report, what steps do you take? Do you notify the complainant and respondent?
 - When you receive a report, what sort of steps do you take to prevent recurrence?
 - Do you consider changes to any supportive measures? How do you monitor these measures?
 - When you conduct your investigation, do you approach such investigations in an objective and impartial manner?



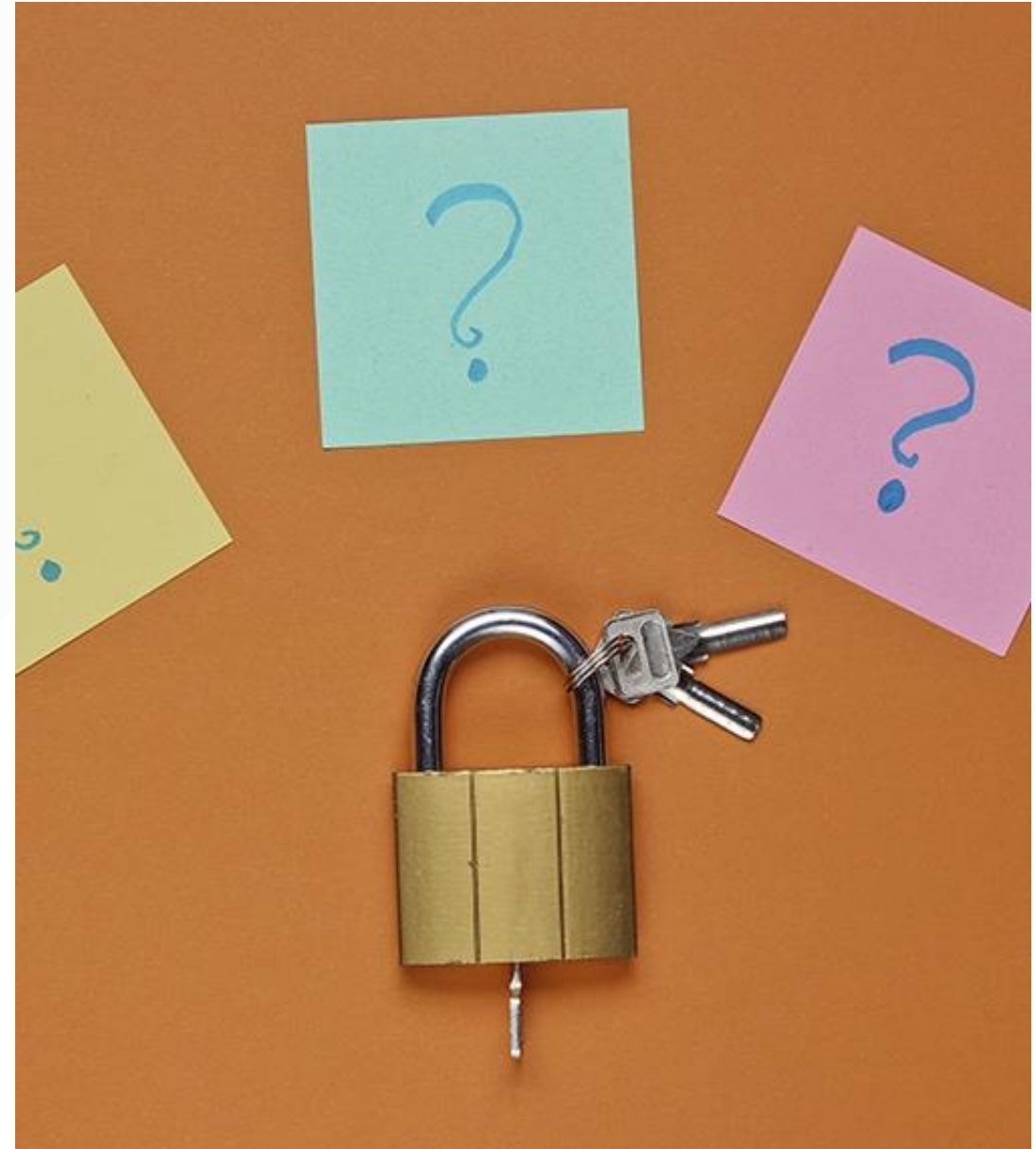


Compliance Review

- **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?

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 sex discrimination?





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 sex discrimination;
 - Knowledge of the policies and forms at the institution; **and**
 - Application of these policies and forms in specific matters at the institution.





Compliance Review

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

Compliance Review

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





**FINAL
THOUGHTS**

Conclusion

v



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.

What was your key takeaway?

Please let us know in the Q&A.

We will use your response with your first name and last initial on our website so others can benefit!



Questions?



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