



Title IX Coordinator Certification Higher Education

Session 4: Case Studies and Compliance Audits

Presented by: Richard F. Verstegen





CASE STUDY

CareerLearning

**Title IX Coordinator Certification Higher Education
Session 4: Case Studies and Compliance Audits**

Presented by: Richard F. Verstegen

Overview

I

Case Studies

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

II

Working With Law Enforcement

III

Retaliation/Confidentiality

IV

Other Issues

V

Conclusion



Case Studies



Case Study

- **Discrimination– athletics**
 - The institution decides to hire a women’s softball coach, who is a recent former player at the college.
 - The institution had received other applications, but the institution 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 experienced coaches and the college is violating Title IX because it failed to provide the women with the same type of coaching.
 - The player wants to file a complaint.

Poll Question

- **How should the college handle this issue?**
 - Inform the student-athlete of the ability to file a complaint under your Title IX grievance procedure
 - Inform the student-athlete of the ability to file a complaint under your Title IX grievance process
 - Inform the student-athlete that the school is not going to address these types of issues
 - Do nothing



Case Study

- **Harassment– in school**
 - A professor observes an exchange between a male and female student. 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 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 professor report this conduct to the Title IX Coordinator as Title IX harassment?**
 - Yes
 - No
 - Not sure





Case Study

- **Harassment– in school/possible crime**
 - 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 university 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. He then grabs her arms, pushes her against a wall, and tries to kiss her.
 - 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

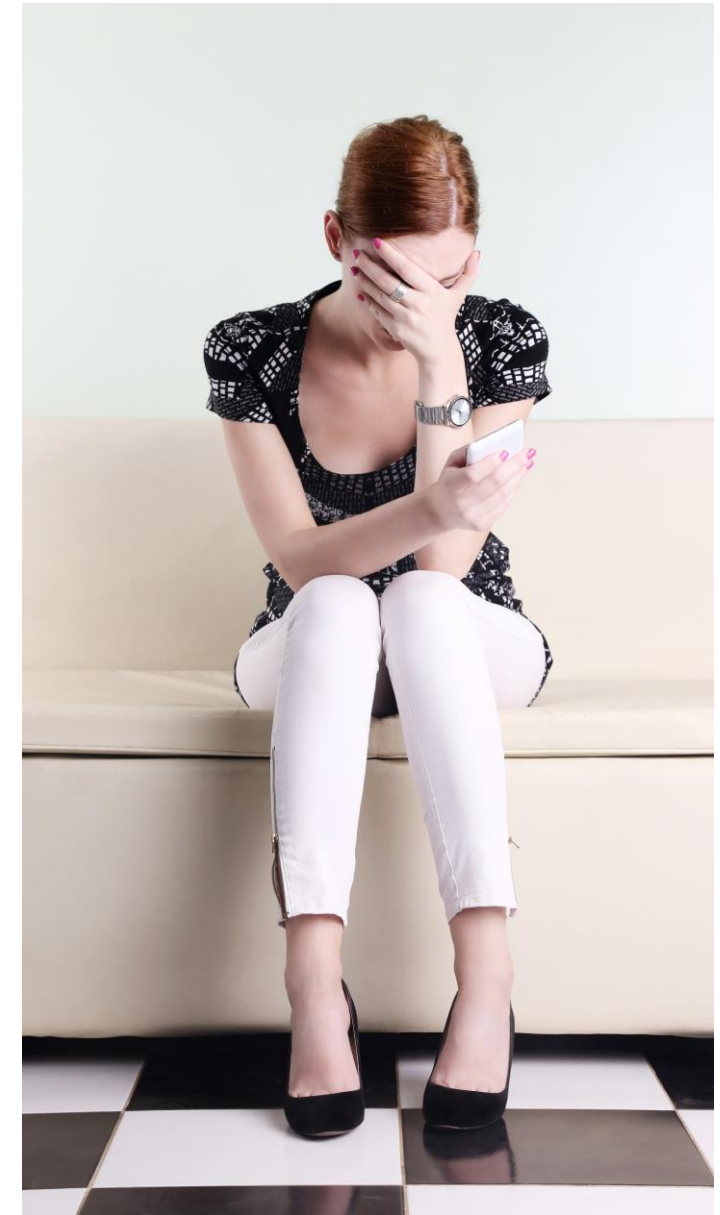


Case Study

- **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.
 - 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**
 - Female student reports that a Snapchat was sent to her from another male student. The Snapchat contained inappropriate sexual comments about the student and inappropriate images. The Snapchat is sent off-campus and over personal devices.
 - The student reports this conduct to the dean of students who is not the Title IX Coordinator. The female student also states that the male student’s friends have been asking her about the Snapchat at school that morning and pressuring her to “hook up” with their friend. The dean then reports this conduct to 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 institution
 - Knowledge of various individuals who are responsible for investigating such issues, and
 - Overall application of the policies on such incidents

Compliance Review

- **Key questions**
 - When you receive a report, what steps do you take?
 - 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 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 misconduct?





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





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
 - Clery Act/VAWA



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**



Questions?



Richard Verstegen
Attorney



Boardman & Clark, LLP



<https://www.boardmanclark.com>



(608) 286-7233



rverstegen@boardmanclark.com

Disclaimer of Warranties

While our certification and webinar programs are designed to provide participants with the skills and knowledge necessary to improve employability and career performance, ultimately the success of a certification or webinar program comes down to the background, practical experience, ability and (especially) commitment of each participant. Because these qualities vary, we are unable to provide universal warranties, representations or guarantees (collectively “Warranties”) that a particular certification or certification program or webinar will result in required legal or regulatory compliance, job placement advantages, career opportunities, or overall attainment of career goals. And while our Programs (as defined below) are designed, written and presented to be as accurate and authoritative as possible, we do not provide medical, legal, accounting or other professional services or advice, and our Programs may not be relied upon as such. The participant (“you”) remains solely responsible for compliance with all applicable laws, regulations, accounting standards, and official health guidelines.

Therefore, you agree that you purchase, participate in, use, and rely on (“your Use”) our certifications, certification programs, webinars, presentations, commentaries, products, services, and materials (collectively, our “Programs”) at your own risk. Our Programs are provided “as is” without any express or implied Warranties of any kind, including any Warranties of merchantability, fitness for a particular purpose, or non-infringement. We provide no Warranties, and you agree by your Use not to rely on any Warranties, that our Programs are free of errors or omissions. As part of the consideration given in connection with being allowed to participate in our Programs, and by your Use of our Programs, you (a) release us from all claims for damages arising or alleged to have arisen from your Use of our Programs, (b) agree that in no event will we be liable for any direct, indirect, special, or consequential damages arising or alleged to have arisen out of your Use of our Programs, and (c) you further agree that any damages you may be awarded against us notwithstanding the foregoing limitations of liability will be limited to the amount, if any, you paid for the Program resulting in or alleged to have resulted in your damages.