



GRAND RIVER | SOLUTIONS

# From One Title IX Coordinator to Another:

A Practical Approach to  
Navigating Beyond Compliance  
in a Post Regulatory World

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March 2022

# Meet Your Facilitators



**Chantelle Botticelli**

*She/Her/Hers*

Director of Strategic Partnerships  
and Client Relations



**Ann James**

*She/Her/Hers*

Senior Solutions Specialist

# About Us

## Vision

We exist to help create safe and equitable work and educational environments.

## Mission

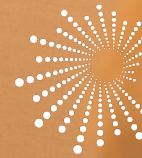
Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

Let's Take a  
Moment.  
Title IX  
Coordinator  
to Title IX  
Coordinator.

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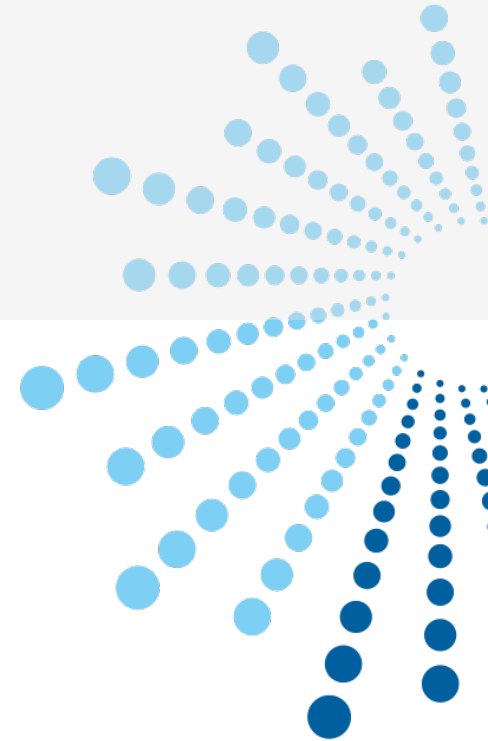


# The Ever-Evolving Jurisprudence of Title IX

"If nothing else, Title IX Coordinators are experts at adapting."

01

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# Title IX of the Education Amendments Act of 1972

"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."

*20 U.S.C. § 1681 (1972).*

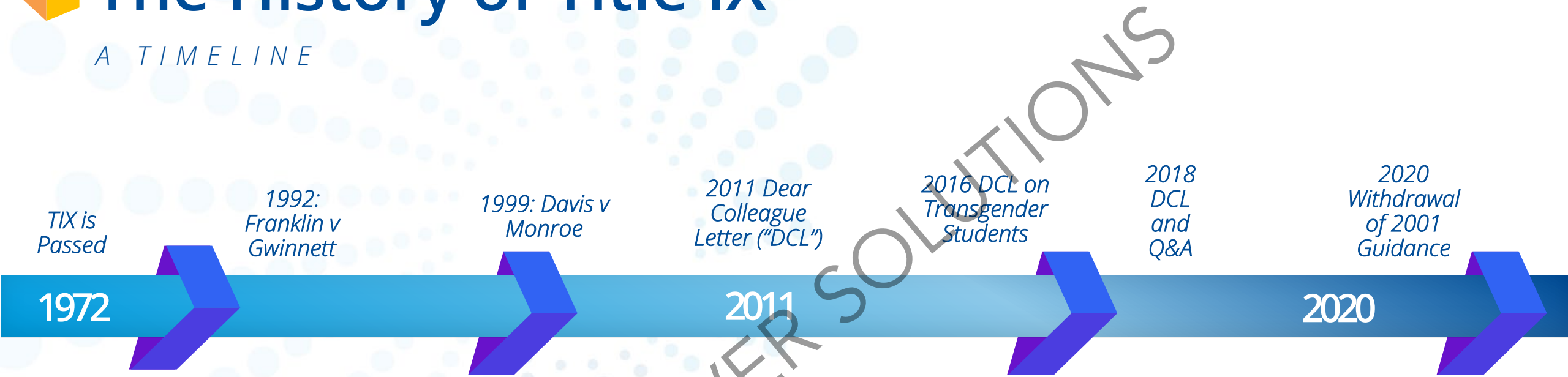
# Title IX Applies to All Forms of Sex Discrimination

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities



# The History of Title IX

A TIMELINE



1972

*TIX is Passed*

*1992: Franklin v Gwinnett*

*1999: Davis v Monroe*

*2011 Dear Colleague Letter ("DCL")*

*2016 DCL on Transgender Students*

*2018 DCL and Q&A*

*2020 Withdrawal of 2001 Guidance*

*1979: Cannon v University of Chicago*

*1998: Gebser v Lago Vista*

*2001: Revised Sexual Harassment Guidance*

*2014 Q&A*

*2017: 2011 DCL guidance & 2016 DCL on Transgender Students Rescinded*

*2020 Regulations*

*2020 Q&A*



# The Title IX Regulations

*Sexual Harassment Only*

1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.



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# Sexual Harassment: *Defined in 1996, 2001, & 2011 Guidance*

*Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:*

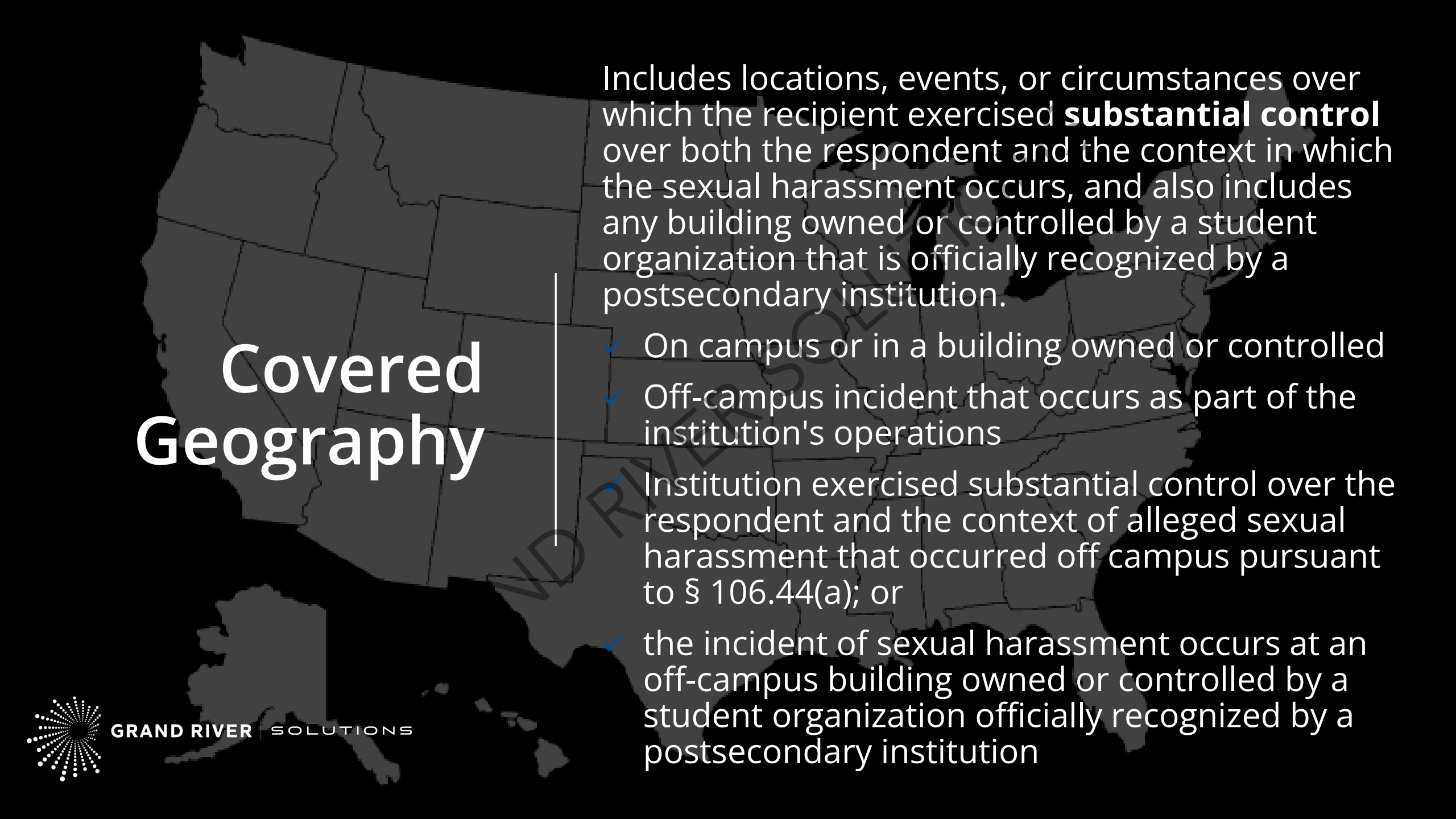
- (1) Conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, OR objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) Sexual assault is a form of sexual harassment

\*Dating Violence, Domestic Violence, Stalking not included pre 2020 regulations

# Sexual Harassment: *Section 106.30*

*Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:*

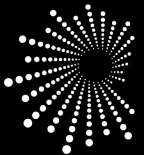
- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).




# Covered Geography

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

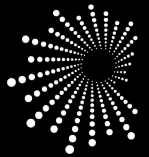
- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution





# Not Covered

- Off campus conduct, even if it has an impact on the educational program or activity;
- Conduct that occurs outside of the United States.



# Covered Individuals

*Eligibility for Title IX's Protections*

**“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30**

**Applicant**

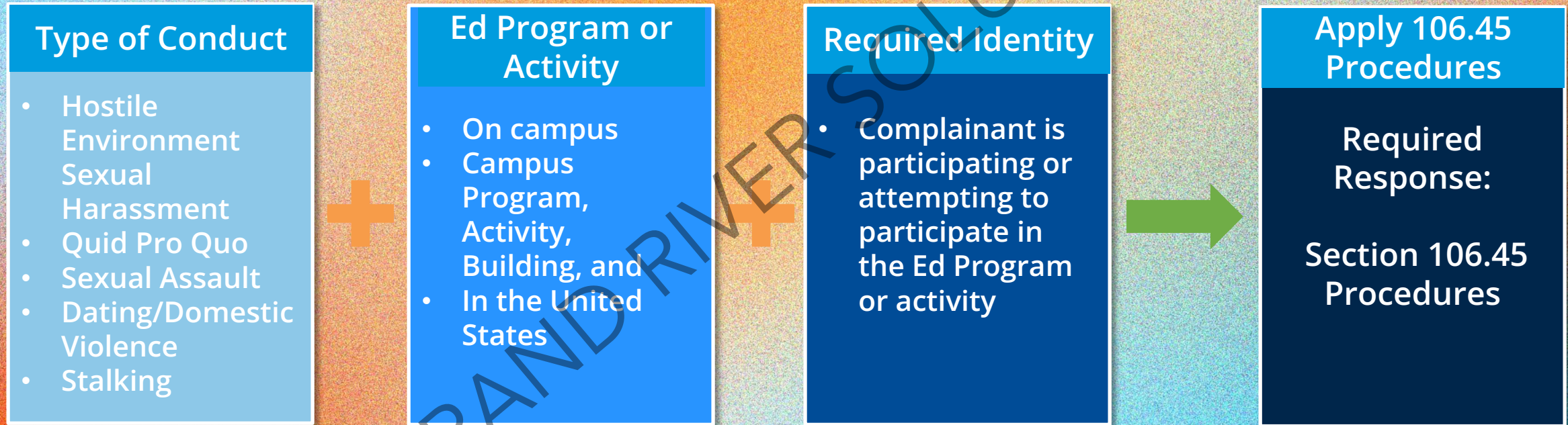
**Accepted/Hired**

**Enrolled/Employed**



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# Title IX Application Post May 2020 Regulations



# Conduct Falling Outside the Scope of Title IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures are compliant with VAWA/Clery, other intersecting federal and state laws





# Actual Notice

*A Narrowed Scope of Institutional Responsibility*

Institution  
must  
respond  
when it  
has:

**“Actual knowledge”**

When “an official of the recipient who has authority to institute corrective measures” has notice, e.g., Title IX Coordinator

**of “sexual harassment”  
(as newly defined)**

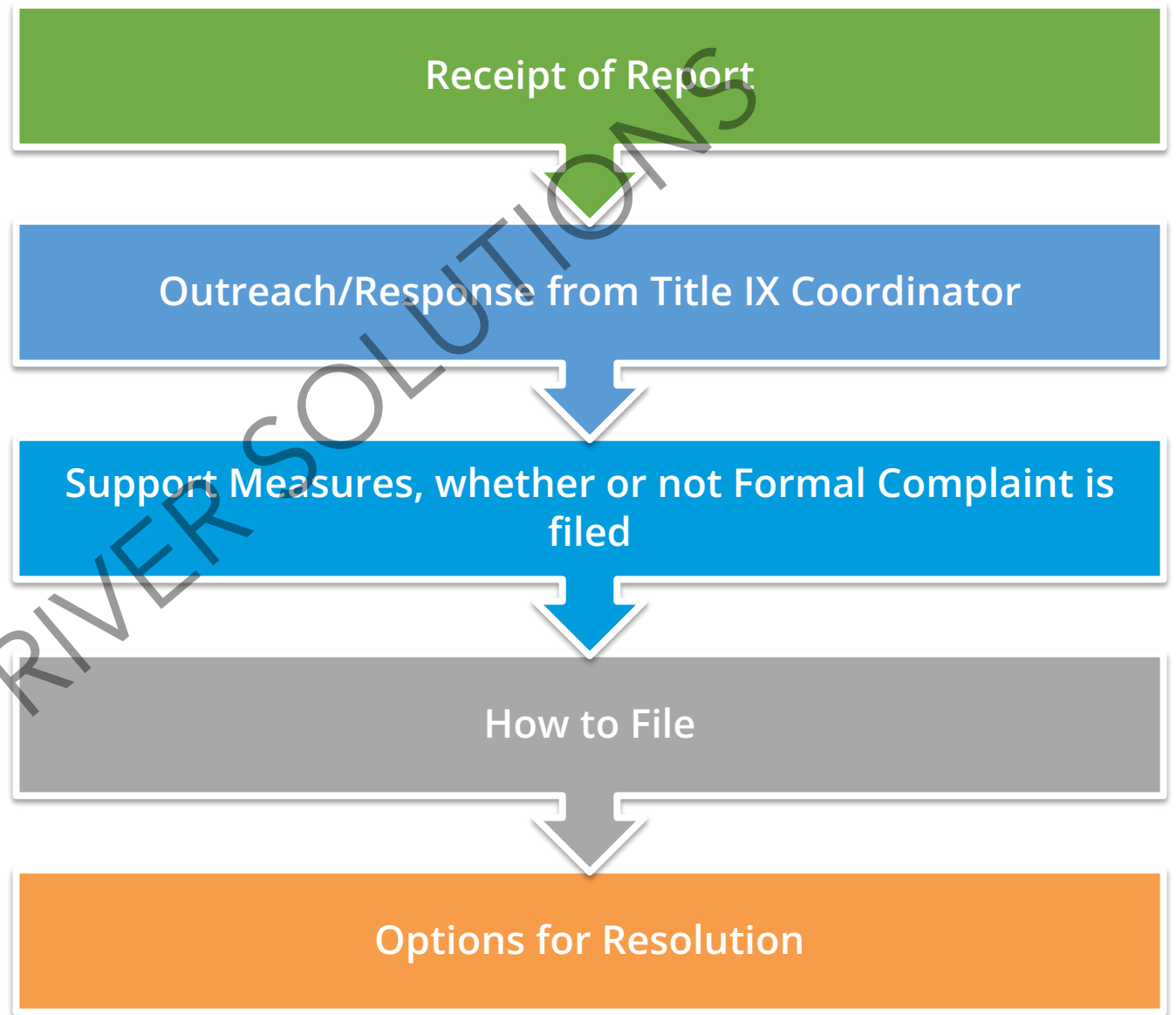
**that occurred within the  
school’s “education  
program or activity”**

“includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred

Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

**against a “person in the  
United States” (so, not in  
study abroad context)**

# Initial Response Requirements



# Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10 day review of report prior to hearing

# Procedural Requirements for Hearings

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Exclusion of Evidence if no cross examination

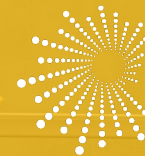
Written decision must be issued that includes finding and sanction

“

## Final Rule § 106.45(b)(8)

[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein.

”



# Appeals: Mandatory Grounds

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(A) Procedural irregularity that affected the outcome of the matter;

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(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

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(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# Other Requirements of the Regulations

Designation of  
a Title IX  
Coordinator

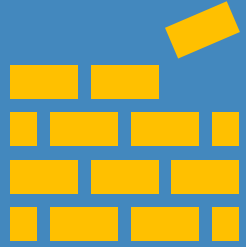
Dissemination  
of policy

Separation of  
Responsibilities

Training and  
posting of  
training

Impartiality

Record  
Keeping



# Building a Foundation of Success

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02



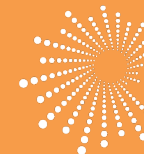
# Final Rule, Section 106.8

Designation of Coordinator, Dissemination of Policy, and Adoption of Grievance Procedures

“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.”

Additionally:

- The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).
- Any person may report in person, by mail/email, telephone using the contact information.
- Reports can be made at anytime.



# Final Rule, Section 106.8(a)

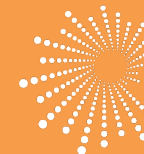
The institution must notify applicants and all members of the community of the Title IX Coordinators

1. Name or Title
2. Office address
3. Email address
4. Phone number

Any person may report , at any time, sex discrimination, including sexual harassment in person, by mail, by telephone, by email, or any other means using the contact information listed

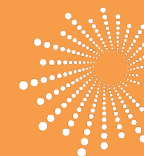
# “Responsibilities Required Under Title IX and the Regulations”

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint;
- Coordinate the effective implementation of supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.

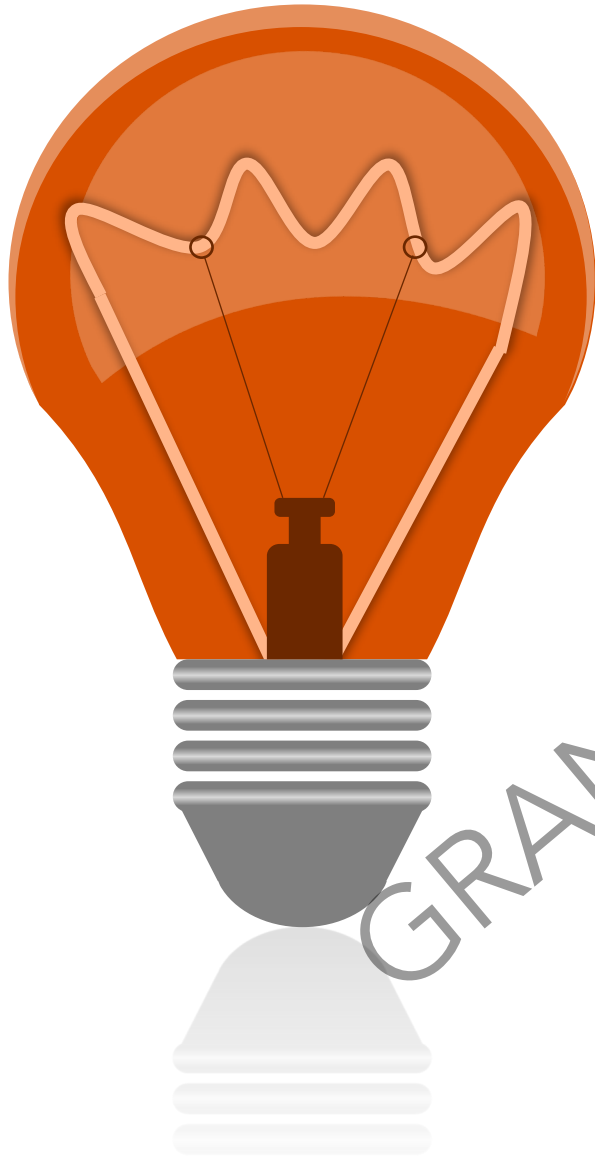


# Responsibilities Often Delegated to the Title IX Coordinator

- Ensuring that the institutional policies and procedures are compliant with Title IX
- Ensuring dissemination of the policy
- Overseeing the grievance process to ensure it is compliant
- Coordinating a compliant grievance process
- Staffing various roles
- Ensuring training requirements are met
- Record keeping
- Compliance with intersecting federal and state laws
- Education and prevention efforts



# The Three Essential Functions of Title IX Compliance



01

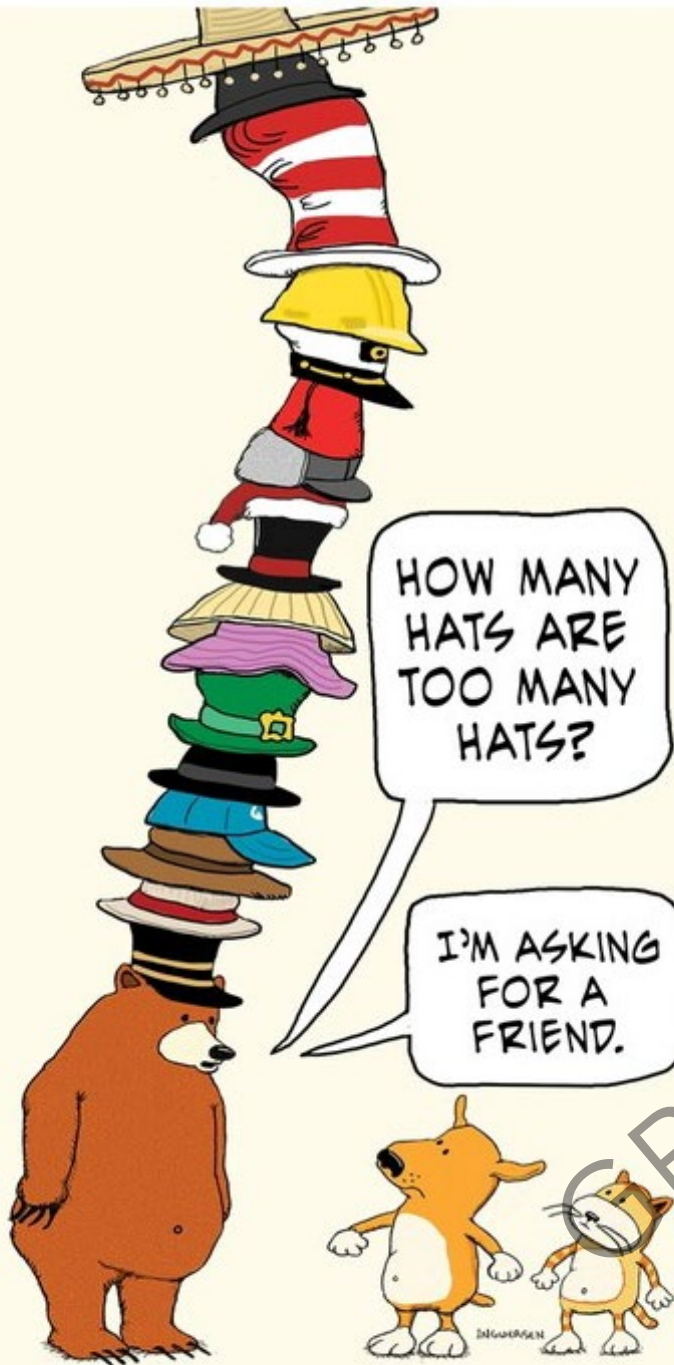
Response

02

Education & Prevention

03

Compliance



HOW MANY  
HATS ARE  
TOO MANY  
HATS?

I'M ASKING  
FOR A  
FRIEND.

Another  
moment,  
please.

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# A Successful Title IX Coordinator...

**C**

Understands the Importance  
of Consistency

**A**

Adheres to policies and  
procedures

**R**

Records or documents  
everything

**E**

Engages meaningfully with the  
community

**S**

Strategically plans for success



# Strategic

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- Conduct your own review: Evaluate the institution's state of compliance, strengths, and opportunities in all areas
- Develop plans for success in every area
- Prioritize the implementation and execution of those plans



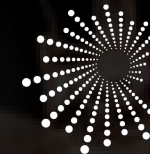
# Engage

- Understand the needs of the community you serve
- Build awareness
- Build trust
- When you engage, others engage
- Can assist with workload



# Adhere

- Adhere to policies and procedures
- Implement training plans
- Stick to compliance plans
- Use the forms that are developed



# Consistency



Creation of Forms  
& Templates



Development of Annual  
Plans for Compliance



Development of Annual  
Plans for Training



Comprehensive  
Policies &  
Procedures

# Record

*Document, Document, Document!*

1. Compliance
  1. Maintain old policies
  2. Keep records of all responses to reporting requirement
2. Training
  1. Dates, times, locations
  2. Attendees
  3. Training materials
  4. Reason for the training
3. Response
  1. EVERYTHING



# Successful Coordinators Approach all Aspects of the Work

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# Impartiality

*Avoiding Prejudgment and Bias*

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).

# Impartiality

*Avoiding Prejudgment and Bias*

Do not rely on cultural "rape myths"

Do not rely on cultural stereotypes about how men or women purportedly behave

Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases

Recognize that anyone, regardless of sex, gender, gender identity or sexual orientation, can be a victim or perpetrator of sexual assault or other violence

Avoid any perception of bias in favor of or against complainants or respondents generally

Employ interview and investigation approaches that demonstrate a commitment to impartiality

# Impartiality

## *Avoiding Bias*

Department also rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience

"Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased" WHILE

"exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents"



# Impartiality

## *Avoiding Conflicts of Interest*

Commenters argued that investigators and hearing officers employed by schools have an “inherent conflict of interest” because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors

Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents

Department’s response: Department’s authority is over schools, not individual investigators and other personnel, so Department will focus on holding school’s responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

# Impartiality

*Avoiding Prejudgment, Bias, and Conflicts of Interest*

## Bottom line

- Follow facts of every individual case
- Investigate in manner that will not allow even a perception of prejudice or bias for or against any party



# Compliance

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03

# Sources of Compliance Obligations

Title IX Final Regulations

Violence Against Women Act

Other, Intersecting Federal Laws

State Law

Legal Precedent

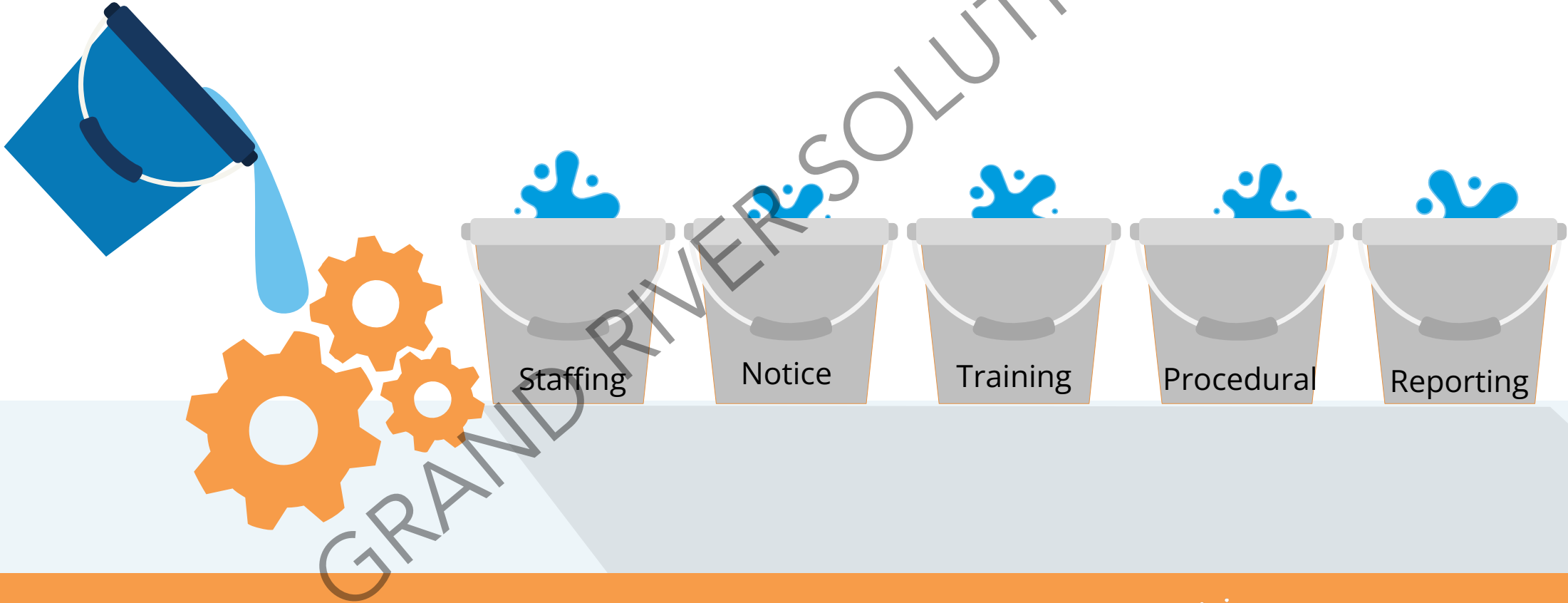
Institutional Policies

Resolution Agreements

# Title IX Compliance Obligations

Designate	Designate a Title IX Coordinator
Disseminate	Disseminate Policy <ul style="list-style-type: none"><li>•Notification</li><li>•Publications</li></ul>
Respond	Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;
Provide	Provide supportive measures in accordance with the requirements of section 160.30
Utilize	For reports of sexual harassment utilize grievance procedures that comply with section 160.45
Require	Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).
Maintain	Maintain records response to sexual harassment in accordance with 160.45 (10)
Comply	Comply with 160.71 prohibition against retaliation

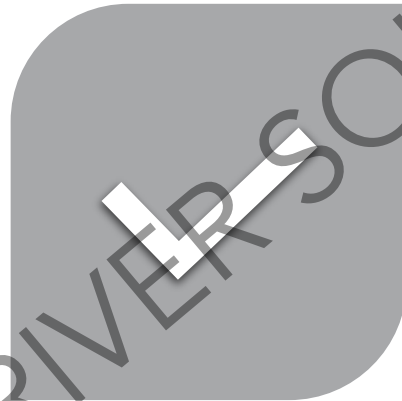
# Categories of Compliance Requirements



# Developing a Strategy for Compliance



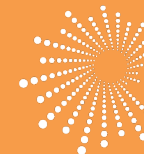
IDENTIFY COMPLIANCE  
OBLIGATIONS



HOW WILL YOU PROVE  
THAT YOU ARE COMPLIANT



RECORD KEEPING



# Implementing the Strategy for Compliance



Partnerships



Record Keeping Databases



Calendar





# Training & Education

Educating ourselves and our communities in a post-regulatory world

04

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# Sources of Training Requirements



Title IX Final  
Regulations

**VAWA**

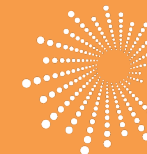
Violence  
Against  
Women Act



State Law



Resolution  
Agreements



# Training and Education

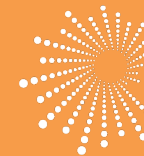
## Two Areas of Focus

1

Institutional  
Response to Sex  
Discrimination

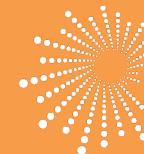
2

Prevention  
Education



# Institutional Response Training

1. Institutional Policies and Procedures
2. Prohibited Conduct
3. Options for Confidential Support
4. The Identify, Role, and Requirements of the Responsible Employee
5. Options and methods for Reporting
6. The Grievance Process
7. The Role of the Title IX Coordinator



# A Really Important Moment. Listen Up. It's Okay...



To not know the answer to every question thrown your way



To say,

"I don't know"

"I'd like to think about that"

"I'll get back to you"

"Thank you for sharing your perspective"



To decline to answer a question



To recognize and assert your expertise

## Title IX Staff

- Coordinators
- Investigators
- Decision Makers (hearings and appeals)
- Facilitators of Informal Resolution
- “Those who are charged with ensuring a prompt, fair, and impartial investigation and result.” (VAWA)

## Students

- New Students
- Existing Students
- Specialized populations
- Student staff

## Faculty

- New faculty
- Existing faculty
- Adjunct Faculty
- Supervising faculty

## Staff

- Senior leadership
- Public Safety/campus law enforcement
- Health care workers

Who Must Receive Training?



# Community Partners?

Boards of  
Trustees

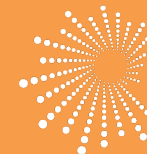
Law  
Enforcement

Advocacy  
Groups

Health Care  
Providers

Attorneys

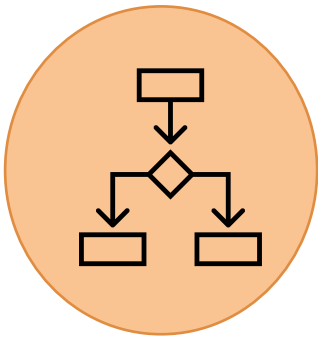
Media



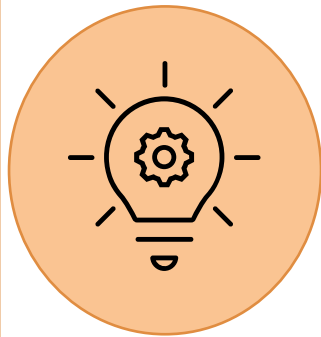
# Training for Title IX Staff



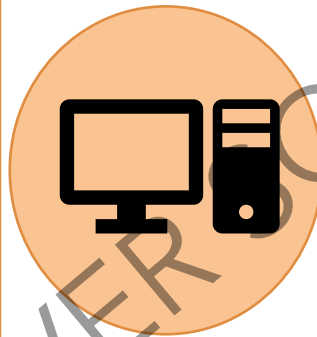
The scope of the institution's education program or activity (i.e., its Title IX "jurisdiction")



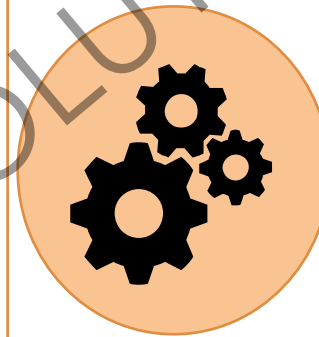
How to conduct the grievance process



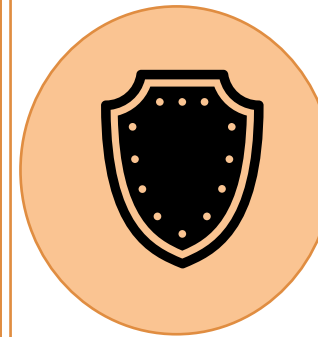
How to serve impartially



The technology to be used at a live hearing



Issues of relevance of questions and evidence



Rape shield protections; and,



Issues of relevance in creating an investigative report.





# Responsible Employees



# Responsible Employee Training: Additional Areas of Focus

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Take time to explain the reason for and importance of Responsible Employee reporting

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Provide advice on how to receive a report

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Provide suggestions on how to share their obligation to report with the reporting individual

---

Instruct on their options for reporting to the Title IX Coordinator

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Fully explain what happens after they report a disclosure

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# Special Considerations for Training & Education in the Post Regulatory Landscape



Explaining the narrowed scope of Title IX



Explaining the institutional decision for two processes/procedures



Responsible Employee challenges



Burden of proof challenges



Length of Training



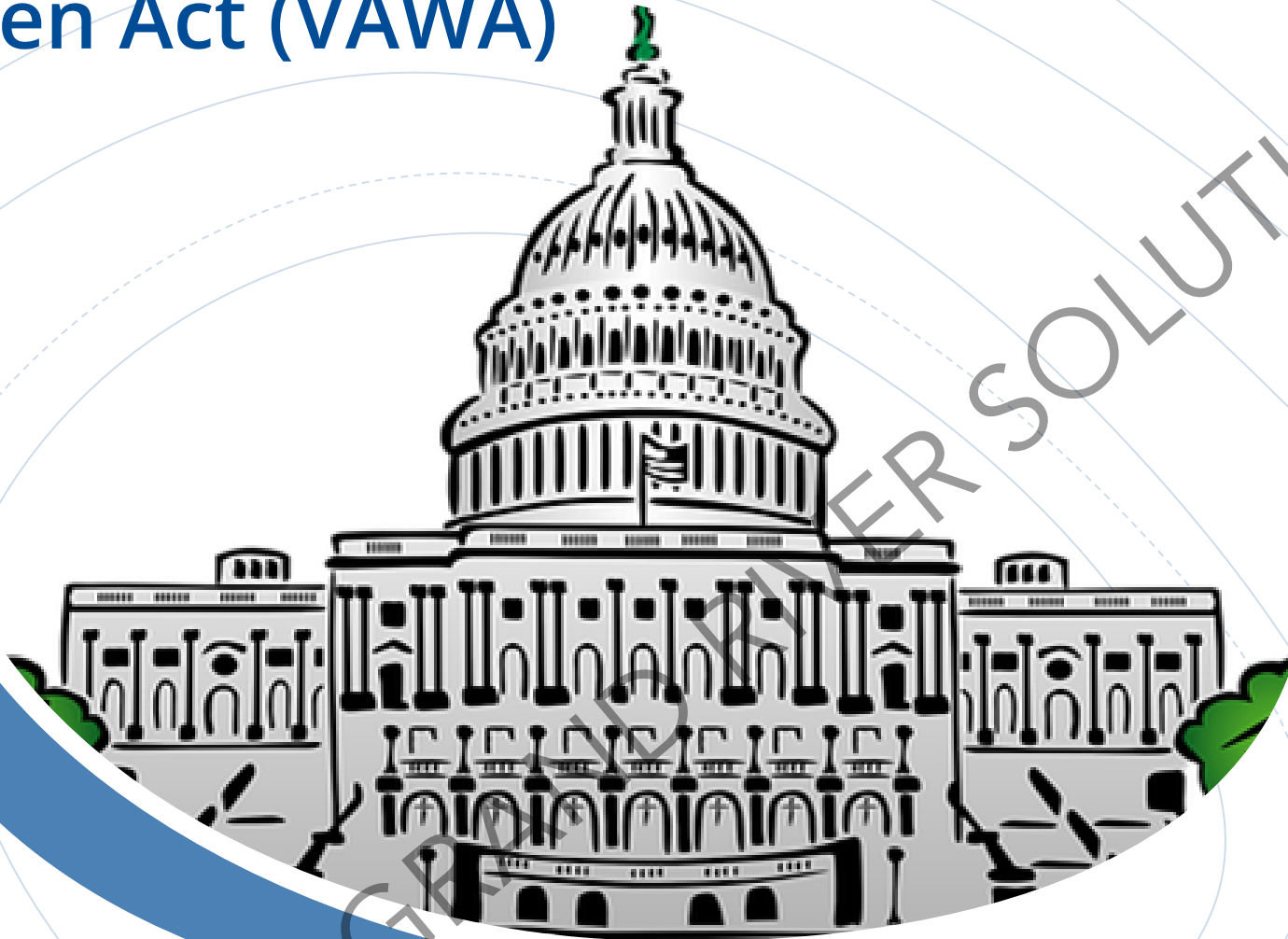
Time for questions/community processing



# Prevention Education: Title IX Regulations

"The Department understands commenters' beliefs that the Department should create rules that monitor drinking, teach about interpersonal boundaries, sexuality, bystander intervention, and sexual consent communication, . . . [A]nd while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients' discretion to provide students (or employees) with educational information." 85 Fed. Reg. 30063 (May 19, 2020).

# Prevention Education: Violence Against Women Act (VAWA)



A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.

Ongoing prevention and awareness campaigns.

# Elements of Annual Training Strategy

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Identify population to be trained

---

Determine topic

---

Schedule the training

---

How will you deliver the training

---

Partnerships

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Communications

---

Community input/feedback

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Engagement as passive education

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# Ongoing Assessment of Trainings

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PRE AND POST  
SURVEYS



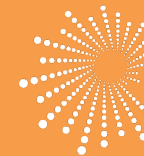
OBSERVATION



OPPORTUNITIES  
FOR FEEDBACK &  
SUGGESTIONS



ENGAGE AND  
LISTEN



# Communicate Training Successes

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**Annual  
Report**



**On your  
website**



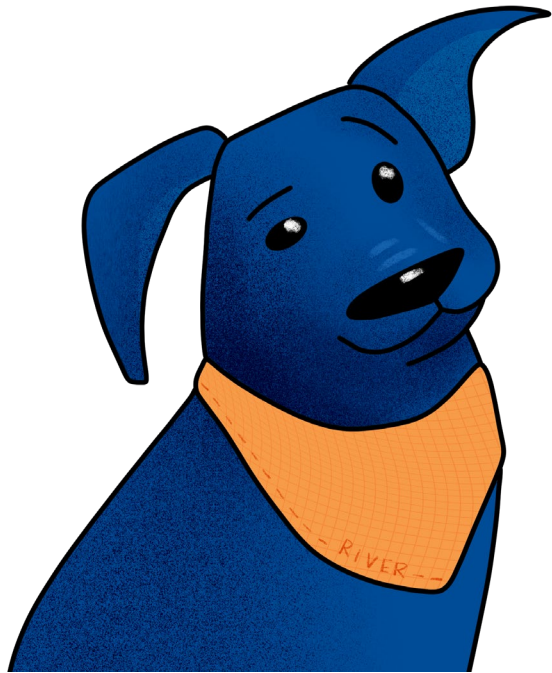
**When training**



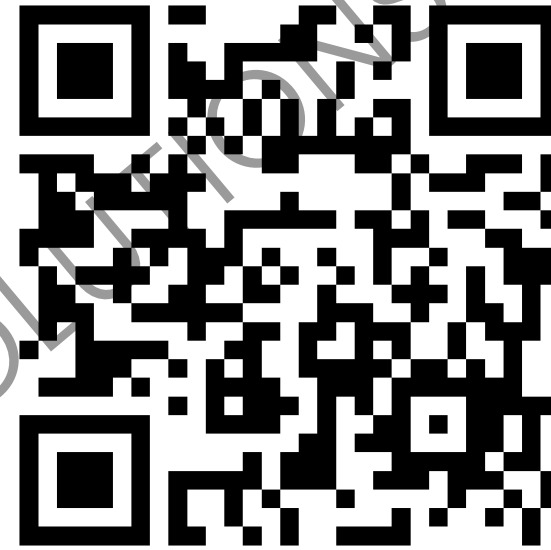
**In conversations**



# Questions?



Leave Us Feedback:



Email Us:

[ajames@grandriversolutions.com](mailto:ajames@grandriversolutions.com)

[info@grandriversolutions.com](mailto:info@grandriversolutions.com)



@GrandRiverSols



Grand River Solutions