



Whataya Want From Me?

*Lessons from Recent
OCR Title IX Resolutions*

Thompson & Horton

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TacTIXs Recap



TacTIXs Webinar January 2024

A Cruel Summer is Coming
Are You Ready For It?

► thlaw.com/CruelSummer



TacTIXs Webinar March 2024

Title IX Tactical Maneuvers:
Building Capacity

► thlaw.com/Tactical



TacTIXs Webinar April 2024

Run the World
(Policy & Procedure Writers)

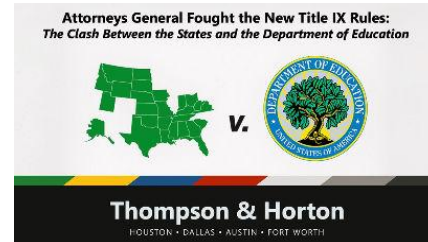
► thlaw.com/RunTheWorld



TacTIXs Webinar May 2024

Let the Sunshine In!
Streamlining Your Title IX Grievance Process

► thlaw.com/Sunshine



TacTIXs Webinar June 2024

Attorneys General Fought the New Title IX Rules
The Clash Between the States and the Department of Education



TacTIXs Webinar July 2024

Into the Unknown
2020 Rules vs 2024 Rules



Title IX Litigation Update



OCR Investigation Process



Lessons Learned from Resolutions



Tips & Takeaways

A grayscale background image of a hand holding a pen and writing on a notepad. The notepad has some faint text, including 'DATE: 11/19/15' and 'TIME: 10:15 AM'.

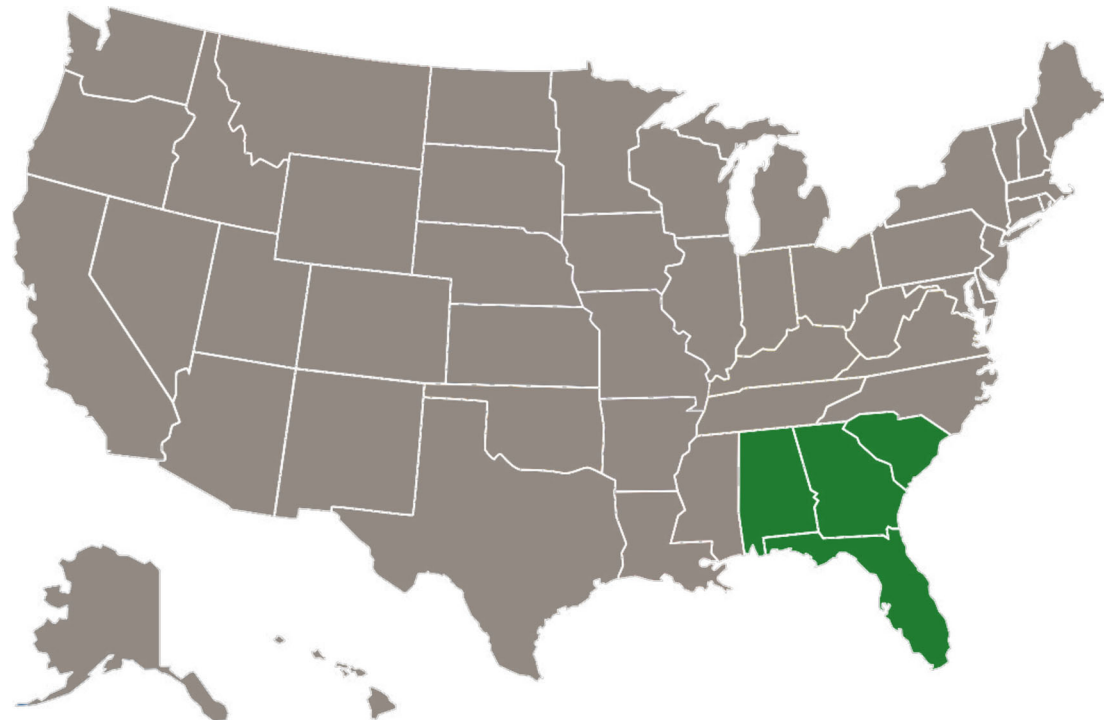
AGENDA

Update on Title IX Litigation



Aug. 22, 2024: 11th Circuit Blocks 2024 Title IX Rules

- ▶ Alabama District Court refused to block the new Rules
- ▶ 11th Circuit granted states' motion for an injunction pending appeal of the District Court decision
- ▶ Found Department overstepped its authority by defining sex discrimination to cover gender identity, requiring bathroom access consistent with gender identity, and expanding the definition of hostile environment

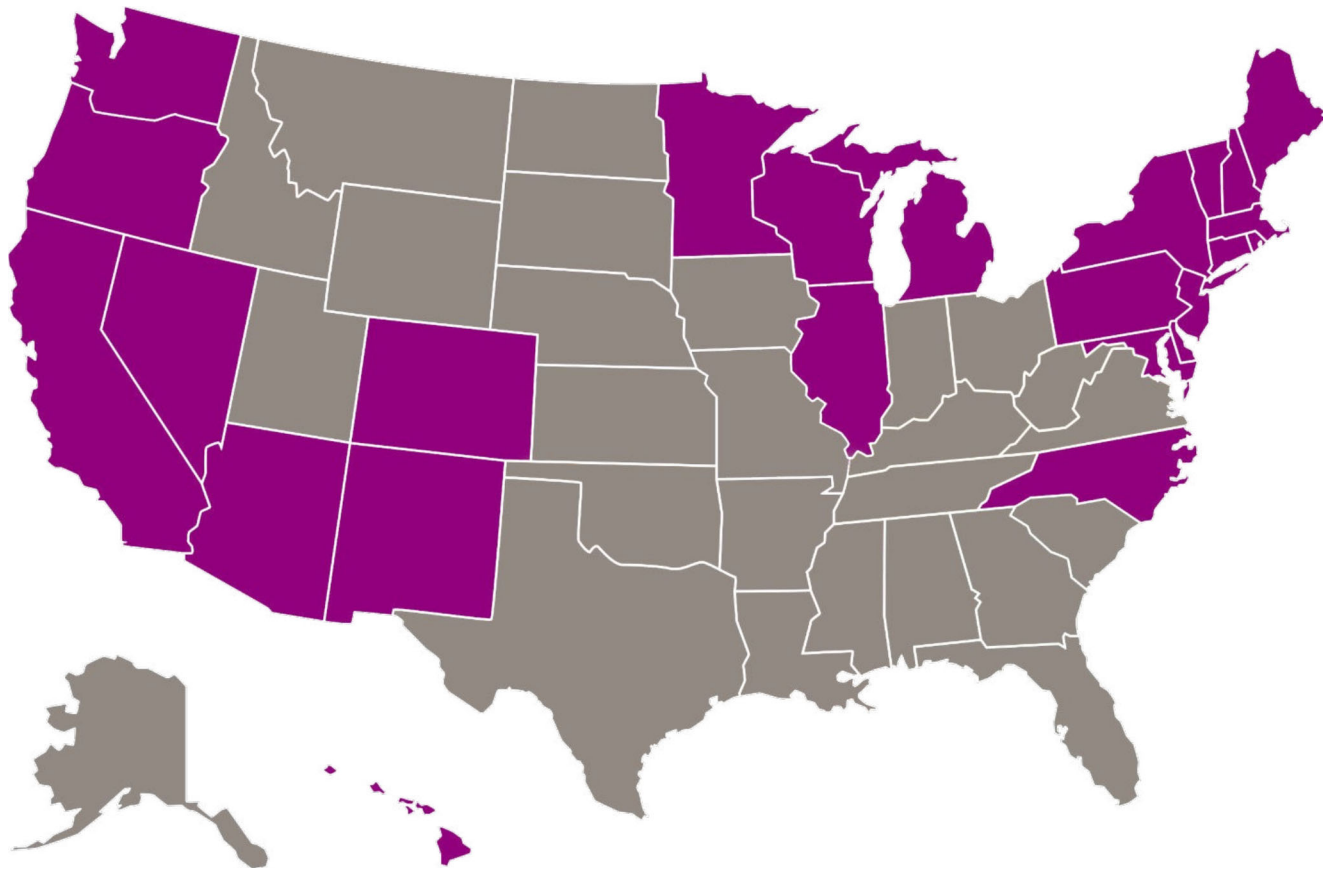


Aug. 16, 2024: Supreme Court Refuses to Narrow Injunctions

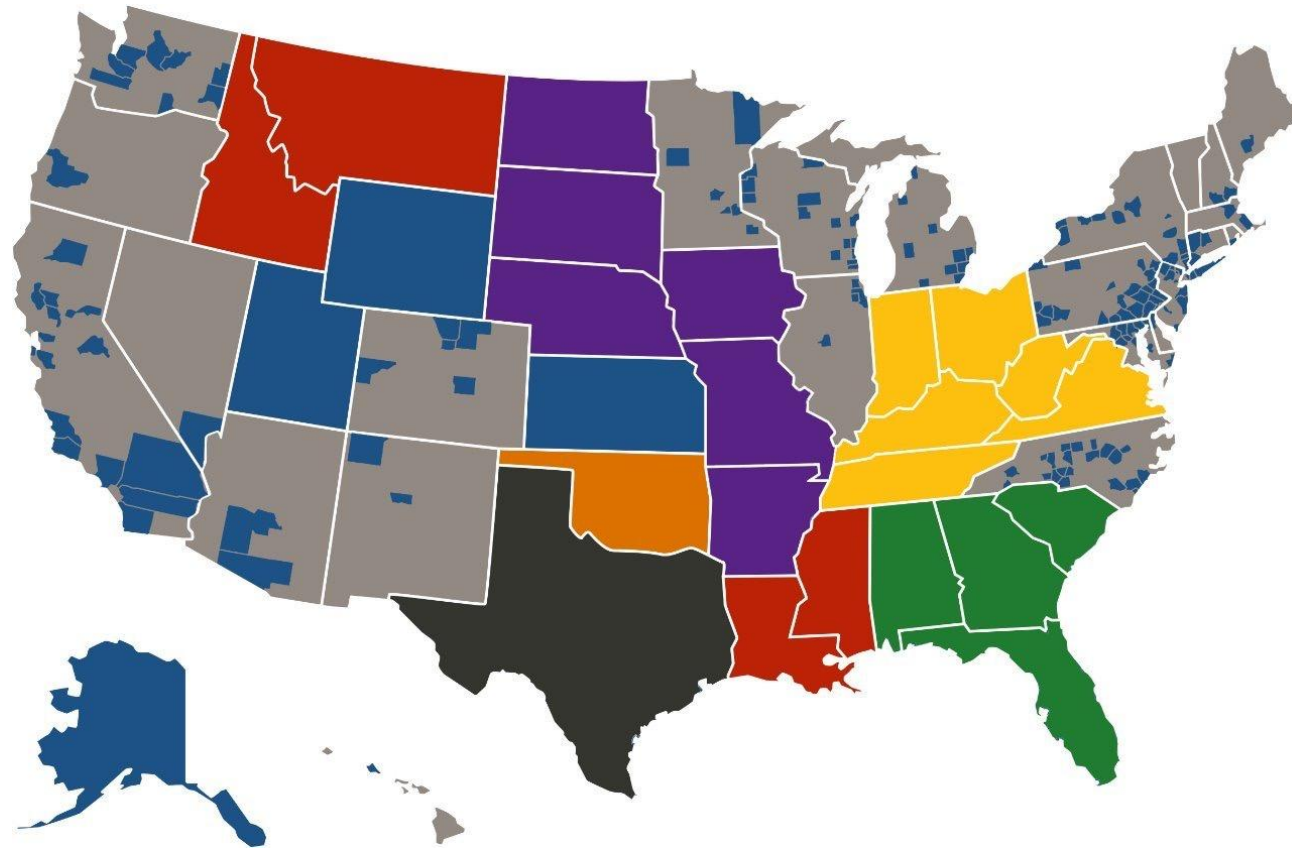
- ▶ ED asked SCOTUS, through an emergency application, to narrow preliminary injunctions secured by states against enforcement of the 2024 Regulations.
- ▶ In a 5-4 decision, SCOTUS denied the request to sever the challenged parts of the Rule and allow the remaining provisions take effect.
- ▶ Applies directly to the injunctions issued by the Kentucky and Louisiana district courts, but other decisions are also unlikely to be narrowed.



2024 Rules in Effect



2020 Rules in Effect

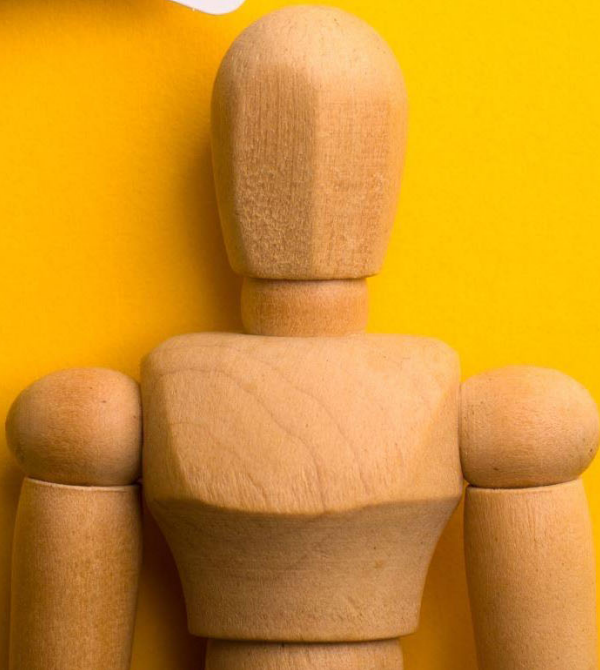




OCR Investigation Process



Anatomy of an OCR Complaint



- ▶ Evaluation
- ▶ Mediation
- ▶ Investigation
- ▶ Resolution
- ▶ Monitoring
- ▶ Enforcement



OCR Process

Evaluation

- ▶ OCR evaluates each complaint to determine whether to launch a formal investigation
 - ▶ Is there an allegation of a violation of law that OCR enforces against an educational institution that receives financial assistance from the USDOE?
- ▶ OCR does not review the merits of the complaint during the evaluation phase
- ▶ OCR assists complainants during this phase, but not institutions

Section 108 Dismissals

Lack of Jurisdiction

Including lack of subject matter jurisdiction or lack of personal jurisdiction

Jurisdiction

Insufficient Complaint

Including insufficient detail and failure to state a valid claim

Insufficiency

No Consent

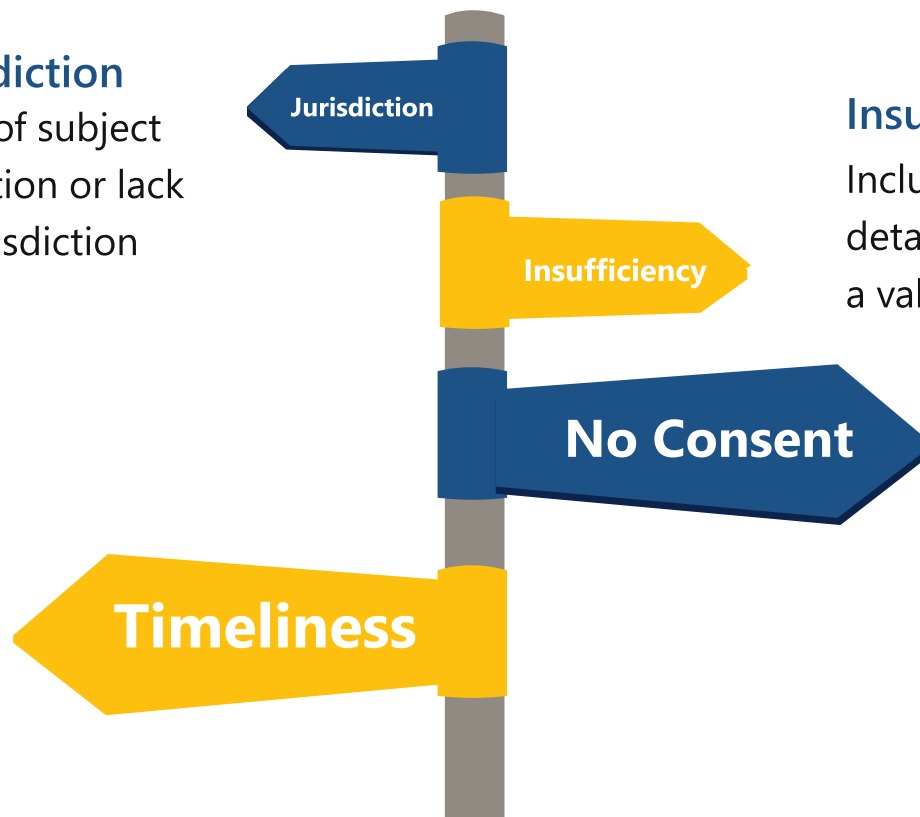
Lack of Consent

Complainant must consent to disclose identity to the recipient and the witnesses

Timeliness

There are exceptions to the general timeliness rule

Timeliness



- ▶ Otherwise known as the Rapid Resolution Process (RRP)
- ▶ Provides opportunity for early resolution without a public finding of a violation
- ▶ Results in a resolution agreement that will remain private
- ▶ Does not require an ongoing monitoring obligation

OCR Process

Mediation

Mediation Considerations



IS YOUR CASE A GOOD
CANDIDATE?



HOW TO ADVOCATE
DURING MEDIATION



WHAT SHOULD BE IN AN
AGREEMENT

OCR Process

Investigation

- ▶ OCR issues a Notice of Allegations (NOA) or Notice of Investigation (NOI) with a corresponding data request
- ▶ Institution has an opportunity to provide a Narrative and Data Response (*i.e.*, a Position Statement)
- ▶ OCR conducts interviews and, when appropriate, a site visit

Investigation Considerations



MANAGING THE
TIMEFRAMES



LIMITING DATA REQUESTED



CONTROLLING INTERVIEWS
AND ON-SITES

- ▶ Resolution can be voluntary (Section 302) or following notice of an adverse finding (Section 303)
- ▶ For a Section 303 agreement, the institution won't have access to the letter of findings before entering into the resolution agreement
- ▶ For a Section 303 agreement, the institution has a 90-day period to negotiate
- ▶ A Section 302 resolution letter will reflect OCR's compliance concerns

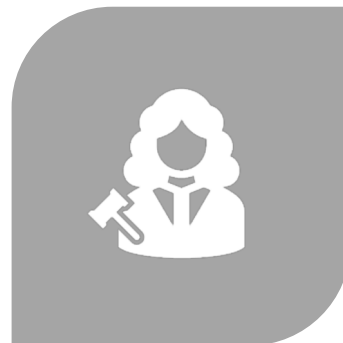
OCR Process

Resolution

Investigative Determinations



INSUFFICIENT EVIDENCE
OF DETERMINATION



NON-COMPLIANCE
DETERMINATION

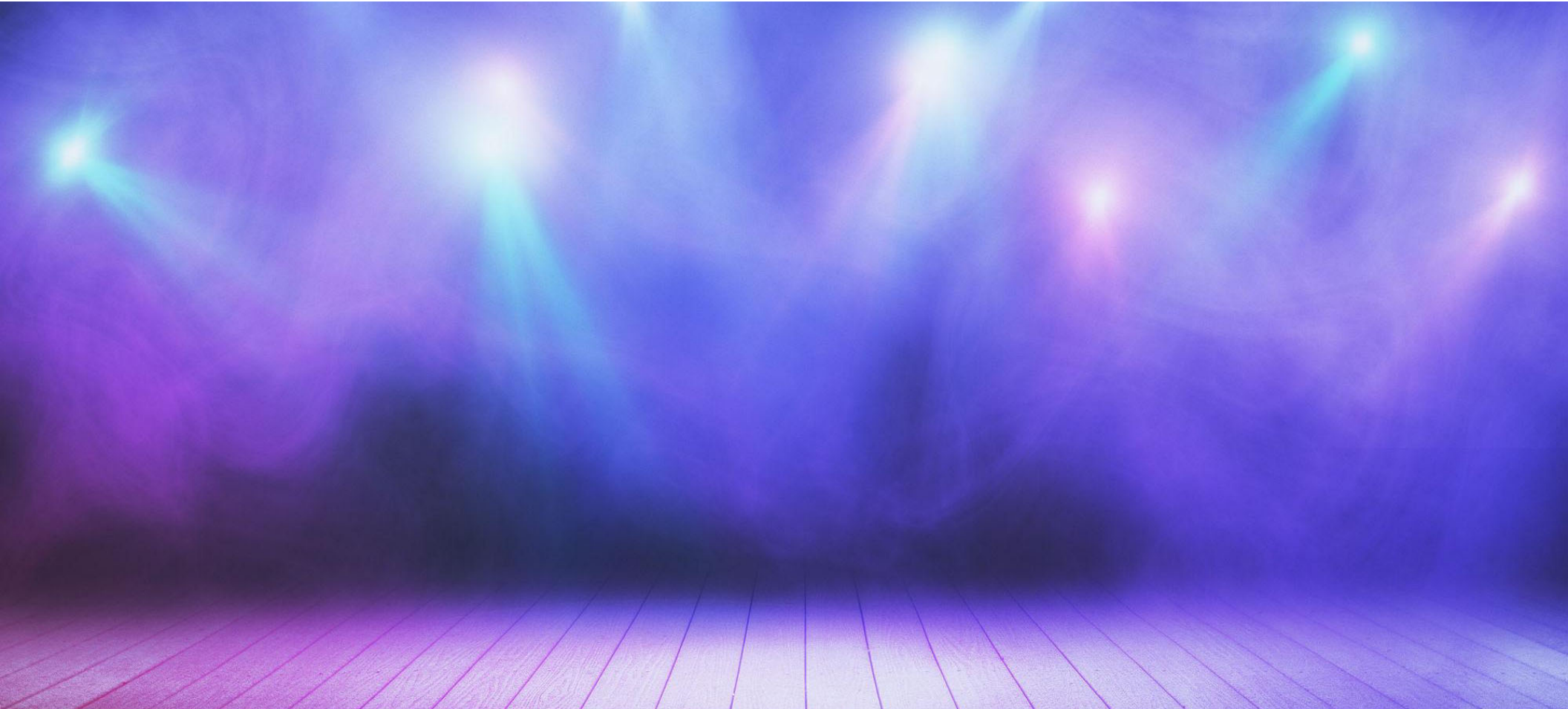


MIXED DETERMINATION

OCR Process

Monitoring

- ▶ Institution must submit data as required by OCR to show compliance
- ▶ Institution may request extensions of time if needed



Lessons Learned



Case Study #1

- ▶ Respondent: San Diego Unified School District (SDUSD)
- ▶ Issued: August 9, 2024
- ▶ Alleged: SDUSD improperly responded to complaints and reports of sexual assault (including student-to-student and employee-to-student misconduct) over a period of three school years.
- ▶ Background: between 2017-2020, SDUSD had 253 reported student-to-student and employee-to-student incidents of alleged sexual harassment, including sexual assault; with seven sexual assault cases pending in litigation.



Case Study #1 - Outcome

Findings

- ▶ District failed to take steps reasonably designed to prevent the recurrence of sexual harassment
- ▶ District failed to evaluate allegations of sexual harassment in accordance with Title IX
- ▶ District failed to ensure equal access to education
- ▶ District failed to provide equitable notice of outcomes



Case Study #1 - Outcome

Findings

- ▶ District failed to adequately coordinate Title IX compliance
- ▶ District failed to adopt prompt and equitable grievance procedures
- ▶ District may not have been properly training employees
- ▶ District may not have been keeping records appropriately



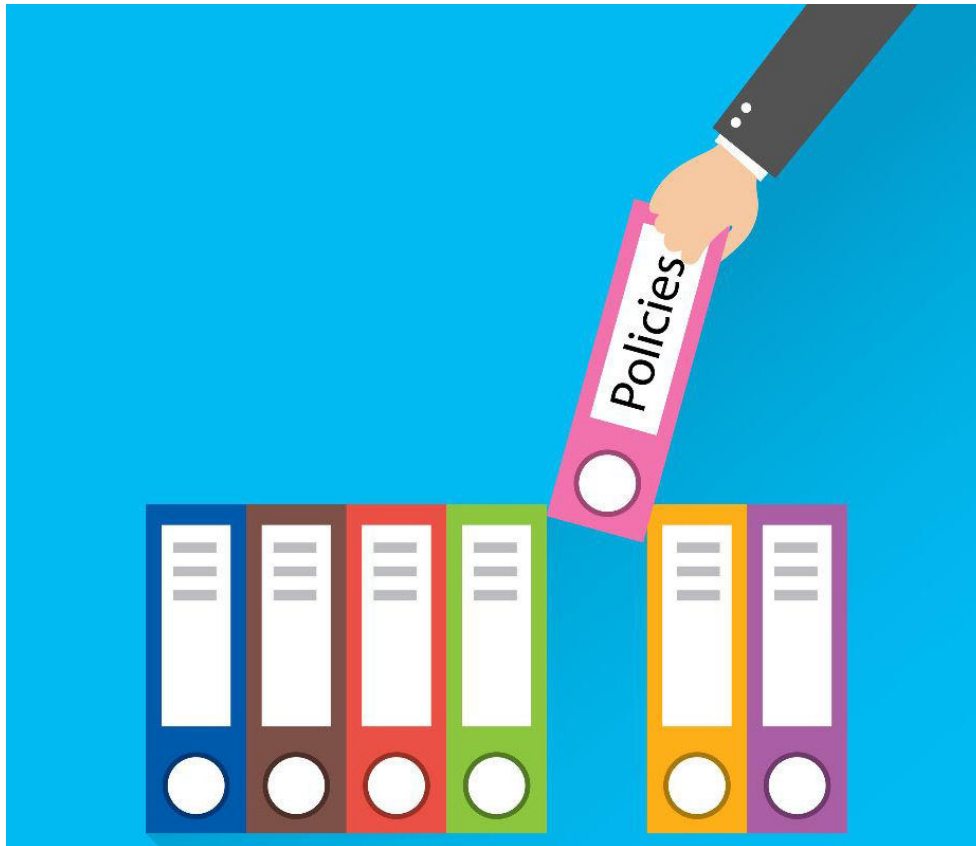
Case Study #1 - Outcome



Corrective Actions Required

- ▶ Coordination of Compliance with Title IX through Title IX Coordinator
 - ▶ Notice to all employees of the requirement to notify T9C of reports of Title IX reports
 - ▶ Proper training and authority to T9C regarding coordinating with other departments

Case Study #1 - Outcome



Corrective Actions Required

- ▶ Title IX Policies and Grievance Procedures
 - ▶ 30-day turnaround for revised policies & procedures
 - ▶ OCR has right to require modifications to ensure compliance

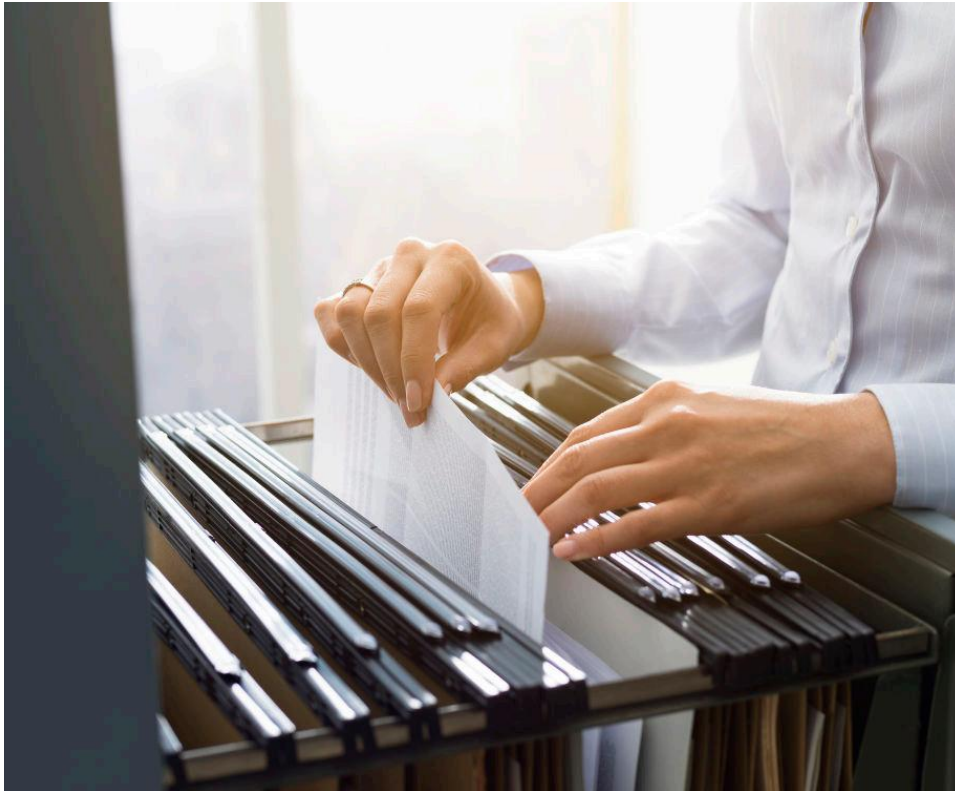
Case Study #1 - Outcome



Corrective Actions Required

- ▶ Training for Personnel
 - ▶ Grievance-specific training for employees involved in grievance process
 - ▶ Annual general Title IX training for all employees
- ▶ Training for Students
 - ▶ Annual training on Title IX policy for students in grades 3-12

Case Study #1 - Outcome



Corrective Actions Required

- ▶ Collection and Maintenance of Data and Records
 - ▶ Draft and implement a centralized recordkeeping policy for all steps in the investigatoion process
- ▶ Climate Surveys
 - ▶ Annual climate surveys for students, personnel, and parents/guardians

Case Study #1 - Outcome



Corrective Actions Required

- ▶ Review prior Title IX files selected by OCR to determine if further action is needed to provide an equitable resolution of the incident
- ▶ MOU with Law Enforcement
 - ▶ Must address information-sharing and acknowledge the District's Title IX obligations

Case Study #1 - Outcome



Corrective Actions Required

- ▶ General Requirements
 - ▶ OCR can visit the District, conduct interviews, and request records at any time during the monitoring period to ensure compliance
 - ▶ OCR may initiate administrative enforcement or refer case to DOJ if breach occurs (with 60 days' notice and right to cure)

Case Study #2

- ▶ Respondent: Redlands Unified School District (RUSD)
- ▶ Issued: April 25, 2024
- ▶ Alleged: RUSD improperly responded to complaints and reports of sexual assault (including student-to-student and employee-to-student misconduct) over a period of three school years.
- ▶ Background: RUSD had experienced “challenges with sexual harassment of students that have been widely publicized in the community where the District is located,” including multiple media outlets covering employee-to-student harassment and settlements of lawsuits regarding the same.

BREAKING

NEWS



Case Study #2 - Outcome

Findings

- ▶ District systematically failed to coordinate its response to sexual harassment through T9C
- ▶ District failed to address the effects of sexual harassment on students or take action to prevent further harassment, including retaliatory harassment
- ▶ District failed to provide adequate notice of investigation outcomes to targeted students or their parents
- ▶ District failed to offer or implement interim measures to support students who reported or experienced sexual harassment



Case Study #2 - Outcome



Findings

- ▶ District failed to meet its obligation to notify the school community of the T9C's identity
- ▶ District failed to adopt and publish equitable grievance procedures for student-to-student harassment complaints
- ▶ District failed to apply prompt and equitable grievance procedures to complaints of employee-to-student sexual harassment
- ▶ District failed to comply with 24 CFR 106.44(a) of the 2020 Regulations (requiring T9C to notify parents of right to file a grievance in response to actual knowledge by any employee)

Case Study #2 - Outcome

Findings

- ▶ District failed to adequately train its former Title IX Coordinator
- ▶ District had "recordkeeping issues" during and after the review period



Case Study #2 - Outcome

Corrective Actions Required

- ▶ Coordination of Compliance with Title IX
 - ▶ Public notice of T9C's identity and contact information
 - ▶ Appropriate training/authority for T9C
- ▶ Title IX Policy and Grievance Procedures
 - ▶ Review and revise (for OCR's final approval) Title IX policies and procedures
 - ▶ OCR may initiate administrative enforcement or refer case to DOJ if breach occurs (with 60 days' notice and right to cure)

Case Study #2 - Outcome

Corrective Actions Required

- ▶ Training for Personnel
 - ▶ Administrators and those involved in Title IX grievance process must receive specific training related to obligations under grievance procedure
 - ▶ Biennial training for all staff regarding Title IX in general
- ▶ Training for Students
 - ▶ Age-appropriate training for all students covering sexual harassment prevention and procedures



Case Study #2 - Outcome

Corrective Actions Required

- ▶ Maintenance of Records
 - ▶ 60-day turnaround to draft recordkeeping policy establishing a system to track reports and formal complaints of sexual harassment and District's responsive action(s)
 - ▶ Annual report to Board and Superintendent regarding information captured by the tracking system in the preceding school year
- ▶ Climate Survey
 - ▶ Annual climate survey for students in grades 3-12 and mandatory analysis and utilization to propose a plan of action to address "all concerns identified"



Case Study #2 - Outcome



Corrective Actions Required

- ▶ Investigations Involving Other Entities
 - ▶ Clarify in procedures and publish on website that if another agency is investigating alleged harassment, the "District will continue to fulfill its obligations under Title IX, including responding to reports and formal complaints of sexual harassment in a manner that complies with the Title IX regulations"
- ▶ District Review of Prior Case Files
 - ▶ Review files selected by OCR to determine if further action is needed to provide an equitable resolution of the incident

Case Study #3

- ▶ Respondent: Arcadia University
- ▶ Issued: October 31, 2023
- ▶ Alleged: University discriminated against two students on the basis of sex by failing to promptly and equitably respond to their complaints of sexual harassment by a professor.
- ▶ Background: Multiple students made informal complaints about tenured professor to Chief Human Resources Officer and the Dean years before three students filed formal Title IX complaints against him. Professor later accused some of those students of cheating in his class.



Case Study #3 - Outcome

Findings

- ▶ Failure to address potentially hostile environment
 - University was on notice through informal complaints and student course evaluations over a period of years that professor's sexually harassing behavior persisted without apparent consequence from the University.
- ▶ Failure to take appropriate steps to determine the outcome of the formal Title IX complaint once the Professor resigned from his position at the University during the pendency of the complaint.

Case Study #3 - Outcome

Corrective Actions Required

- ▶ Complete Investigation into Formal Complaints
- ▶ Offer to Reimburse Out-of-Pocket Counseling Costs for Complainants A and B
- ▶ Review Prior Title IX Complaints
- ▶ Review All Complaints Against Professor
- ▶ Ongoing OCR Review of Sexual Harassment Complaint Resolutions
- ▶ Climate Survey for Students
- ▶ Review Title IX Policy and Procedures and Revise if Necessary

Case Study #4

- ▶ Respondent: Morgan Hill Unified School District (MHUPS)
- ▶ Issued: October 19, 2023
- ▶ Alleged: MHUPS discriminated against female athletes by not providing equitable resources and opportunities and failed to adopt and publish appropriate grievance procedures for sex discrimination complaints.
- ▶ Background: School was not funding athletic programs and was instead relying on one schoolwide booster club to meet teams' equipment and other needs. Boys' lacrosse and football teams earned the most funds through fundraising and therefore benefited the most from the booster club.



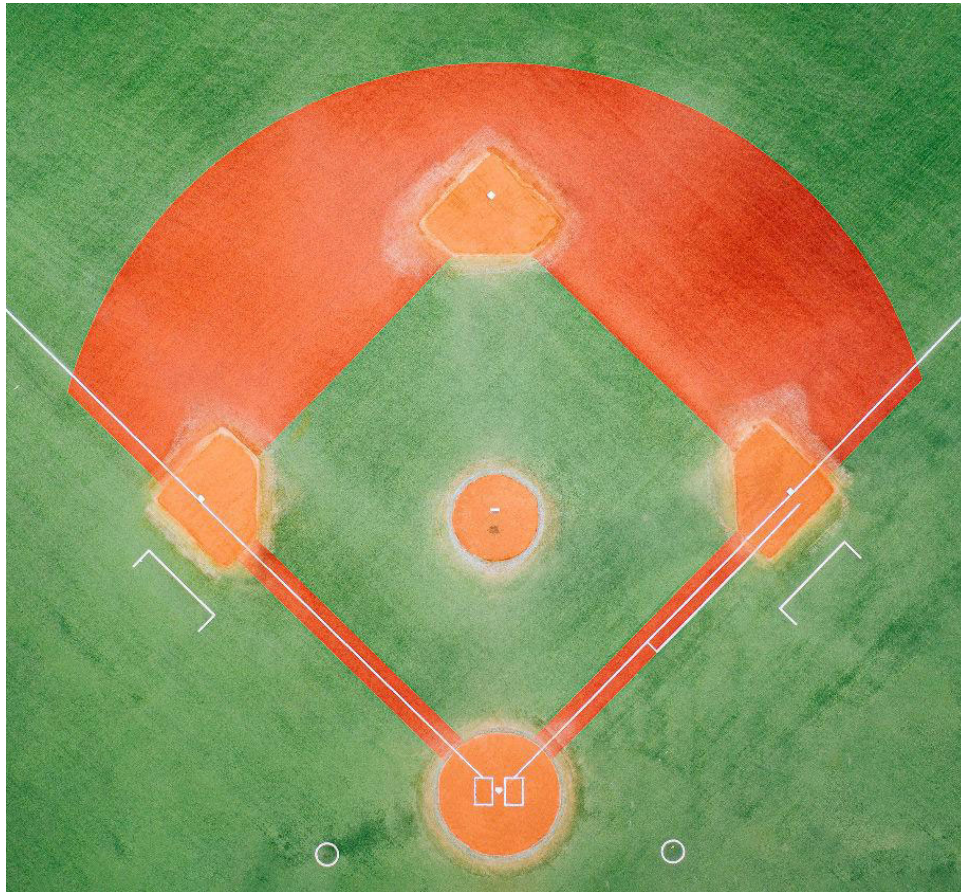
Case Study #4 - Outcome

Findings

- ▶ MHUPS was not providing equal athletic opportunities for members of both sexes.
- ▶ **“OCR does not view some School athletic programs having access to better equipment as a result of successful fundraising to be a legitimate, non-discriminatory reason that excuses the District from providing equivalent equipment and supplies to girls’ and boys’ athletic programs.”**



Case Study #4 - Outcome



Findings

- ▶ Inequitable locker rooms and practice/competitive facilities
- ▶ Inequitable access to trainer and weight training facilities
- ▶ Inequitable access to upgraded equipment/supplies
- ▶ Inequitable opportunities for transportation to and meal arrangements for away games
- ▶ Inequitable opportunities to receive coaching
- ▶ Inequitable scheduling of game times
- ▶ Inequitable publicity

Case Study #4 - Outcome

Corrective Actions Required

- ▶ Title IX – Athletics Training
- ▶ Create Athletic Equipment and Policy Committee
 - ▶ Draft Equipment Acquisition Request Procedures
- ▶ Ensure Equivalency of Practice and Competitive Facilities
 - ▶ Girls' access to boys' second field
 - ▶ Modification to or installation of facility features at softball fields
- ▶ Equitable Locker Room Access
- ▶ Equitable Coaching Personnel
- ▶ Equitable Access to Trainer and Weight Room
- ▶ Equitable Transportation and Per Diem
- ▶ Equitable Publicity
- ▶ Equitable Scheduling

Case Study #5

- ▶ Respondent: Hinds Community College
- ▶ Issued: April 11, 2024
- ▶ Alleged: HCC discriminated against a student on the basis of sex by failing to provide her with academic adjustments during her pregnancy and by failing to respond promptly to the student's complaint of pregnancy-based harassment.
- ▶ Background: Student requested but did not receive adjustments related to pregnancy appointments, class participation after childbirth, and pumping breast milk.



Case Study #5 - Outcome

Findings

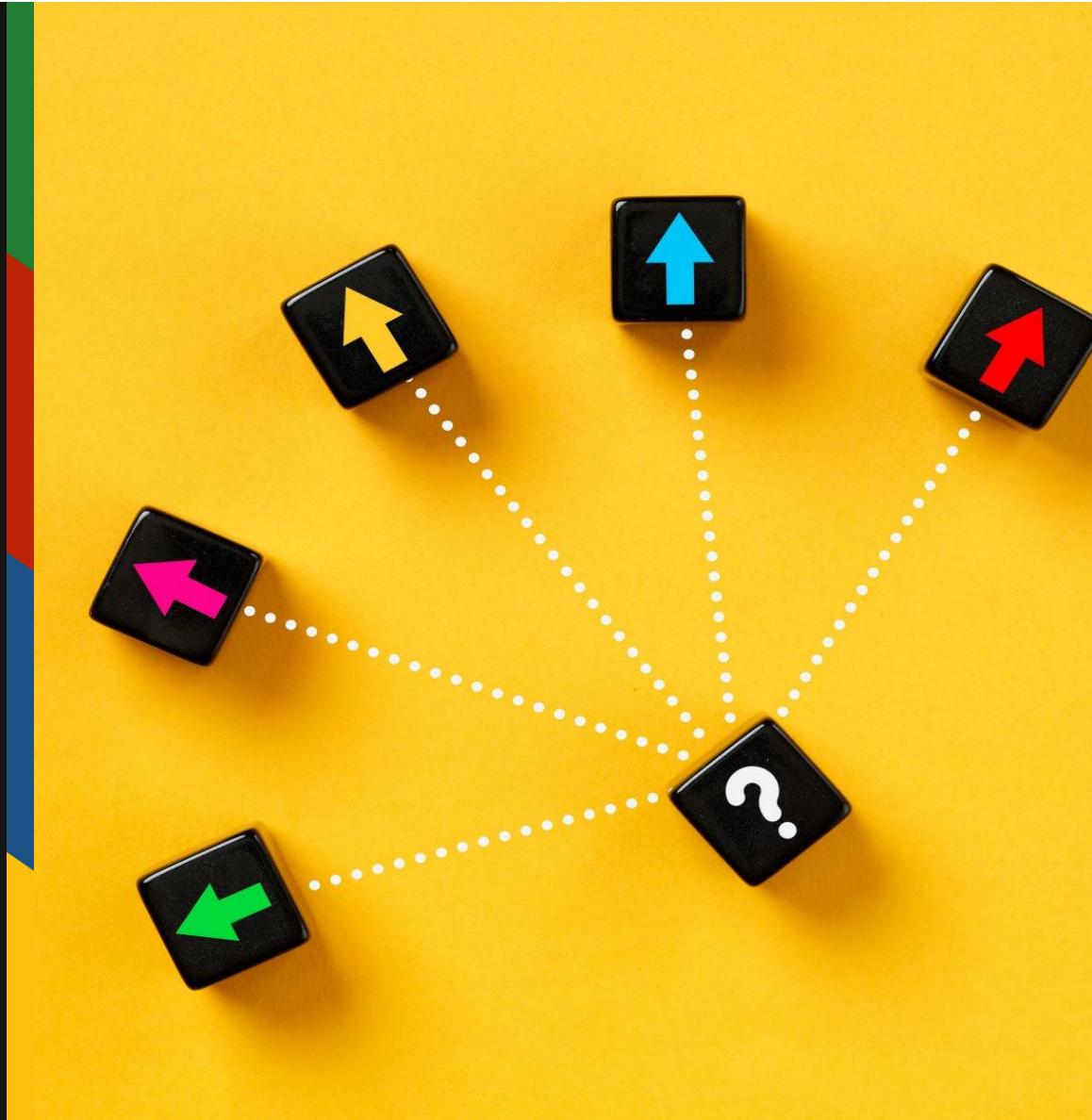
- ▶ College failed to recognize pregnancy and related conditions as Title IX* matter
- ▶ College failed to appropriately respond to the student's requests
- ▶ College failed to consider whether the student's pregnancy had caused a temporary disability under Section 504
- ▶ College failed to remedy pregnancy-based discrimination and harassment by a faculty member
- ▶ College failed to appropriately respond to Title IX complaint

Case Study #5 - Outcome

Corrective Actions Required

- ▶ Review and Revise Practices, Policies, and Procedures
- ▶ Website Update and Dissemination of Information
- ▶ Training on Rights of and Obligations to Pregnant Students
 - ▶ Survey for Trained Faculty and Staff
- ▶ Tracking System for Pregnancy-Related Adjustments for Students
- ▶ Remedies to Student's Title IX Complaint

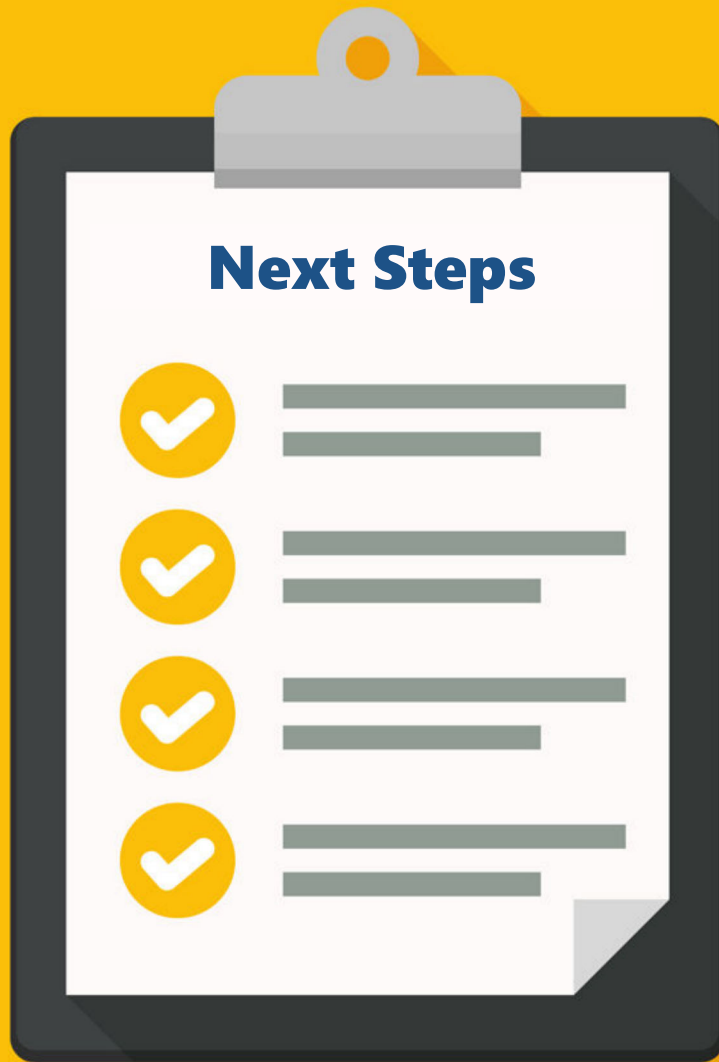
What's a School To Do?



Takeaways

- ▶ These public adverse findings are the result of extensive investigations into the allegations against these institutions.
- ▶ You can't always avoid a complaint, but you can do your best to avoid an adverse finding.
- ▶ A recurring theme in these case studies is a systematic *misunderstanding* of Title IX and the institution's obligations thereunder.
- ▶ Even for institutions with the appropriate policies and procedures in place, those policies and procedures only work if they are *followed*.





1

AUDIT

2

TRAIN

3

IMPLEMENT

1

Audit Your Existing Policies

- ▶ Ensure your policies are aligned with the currently applicable Title IX Regulations in your state.
- ▶ Customize your policies to meet your institution's unique needs, structure, and stakeholders.
- ▶ Ensure your policies reflect accurate Title IX Coordinator contact information and reference other policies as necessary and appropriate.
- ▶ Publish your policies on your institution's website and include references in student and employee handbooks.



2

Train Employees

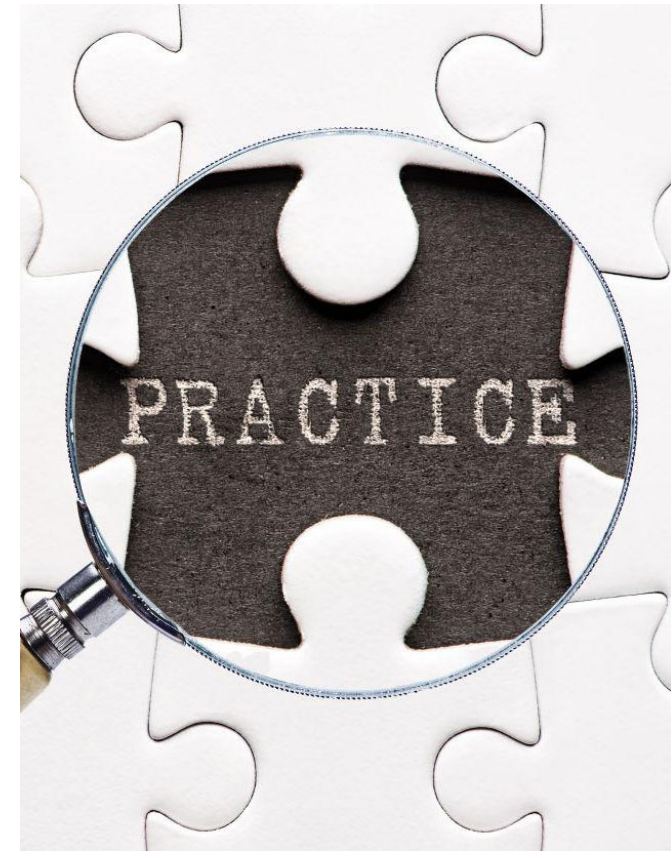


- ▶ Provide institution-specific training to every employee and incorporate your freshly audited policies.
- ▶ Provide targeted training to individuals responsible for the implementation of the Title IX complaint process or other functions related to Title IX (including the review/determination process for adjustments related to pregnant students).
- ▶ Provide even more targeted training to the Title IX Coordinator about duties and responsibilities under Title IX.
- ▶ Keep adequate records of trainings provided to your employees.

3

Implement Title IX Policies

- ▶ Ensure Title IX Coordinator is involved in every investigation and guarantee Title IX Coordinator has access to records and information from every department across the institution (including human resources and the police department, as applicable).
- ▶ Do not defer to other agencies or departments for investigations involving subject matter that is covered by Title IX.
- ▶ Ensure remedial efforts are offered and provided (or, if declined, documented).
- ▶ Maintain adequate records of every step of every investigation.
- ▶ Investigate and address every instance of noncompliance with your Title IX policies.

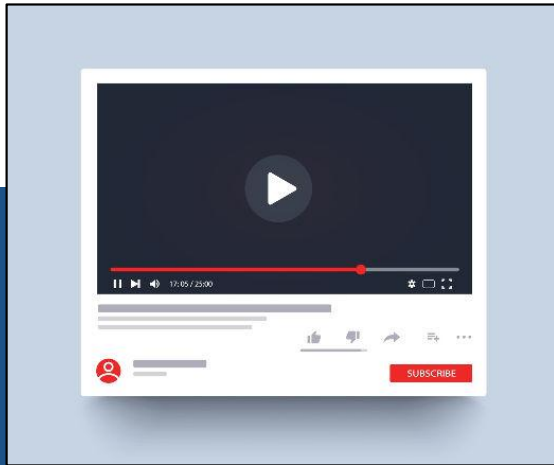




Title IX Administrators

T&H Has You Covered

Video Training



Virtual Training



In-Person Training



Thompson & Horton's

2024 Title IX Training

titleix@thlaw.com

Title IX Leadership Alliances

K-12

4th Tuesday of the month

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- ▶ Email titleix@thlaw.com
- ▶ Use the QR code



Community College

Last Wednesday of the month

- ▶ Register at thlaw.com/ccalliance
- ▶ Email titleix@thlaw.com
- ▶ Use the QR code



4 Yr. College or University

Last Thursday of the month

- ▶ Register at thlaw.com/4yralliance
- ▶ Email titleix@thlaw.com
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Thank You



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