Meeting the Obligation
to respond to sexual violence.

Bill Born,
Venture International LLC

Mohammed Lakhani,
Clark Hill PLC
CAMPUS SAFETY

TEACHING AND LEARNING
- Response Team, Faculty, and Staff
- Student Leaders and Student Body

DEFINITE POLICIES
- Clearly Articulated and Broadly Distributed

SHARE VALUES
- Reflection of Mission, Values, and Community Expectations

TRAINE AND CAMPUS EDUCATION
- Title IX and OCR
- Clery Act/SaVE Act
- FERPA
- Violence Against Women Act

REPORT OUTCOMES
- Internal/External Clery Act and Accreditation

DEFINE PROCEDURES
- Advocacy, Confidentiality, Just and Fair

CONSTITUENT CONFIDENCE
- Parental Trust

CAMPUS SAFETY
Institutional Values, Distinctives and Structure

- Core Values
- Campus History
- Faith or Denominational Affiliation
- Faith Values
- Constituent Expectations
- Faculty and Staff Expectations
- Student Expectations

Balancing Generational Differences
DEFINE POLICIES

- TITLE IX AND OCR
- CLEARY ACT/SaVE ACT
- FERPA
- VIOLENCE AGAINST WOMEN ACT
Overview

• No person in the United States shall, on the basis of sex, be excluded from participation, or denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681, et seq.

• Applies to any institution that receives federal financial assistance

• Intended to prevent unlawful discrimination and to provide remedies for the effects of past discrimination.
Protection To...

• Protects all students from sexual violence regardless of race, national origin, disability, part-time/full-time status, sexual orientation, gender identity.
  – Same sex should be handled with same procedures as opposite sex complaints
  – Practice Pointer- Process should take into consideration students with disabilities and international students
Title IX Remedies

Victims
- Title IX allows a private right of recovery for monetary damages against institution. Franklin v. Gwinnett County Public Schools

U.S. Government
- Enforced by U.S. Department of Education, Office of Civil Rights
- Government remedy: termination of federal funding.
Basic Terms

• Sexual Violence- physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the student’s age or drug/alcohol use, or because an intellectual or other disability prevents the student from having the capacity to give consent).
  
  — i.e.- rape, sexual assault, sexual battery and sexual coercion
Basic Terms

• Hostile environment - conduct that limits or denies a student’s ability to participate in or benefit from an educational program
  – Could be a single incident or repetitive series of incidents.
  – OCR takes a look at all relevant circumstances to determine if hostile environment exists
    • type of harassment (e.g., whether it was verbal or physical)
    • frequency and severity of conduct
    • the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student)
    • the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and other relevant factors
Basic Terms

• Sexual harassment- unwelcome conduct of a sexual nature.

• Examples:
  – unwelcome sexual advances
  – requests for sexual favors
  – other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence
Notice

• Institution is on notice if a responsible employee knew or should have known
• Broad definition
• Can come from third parties, media or employees own observations on campus.
• One Exception: Public awareness events where students may disclose sexual violence experiences
  – i.e.- Take Back the Night
Actions Required by Institution

- Must take action as long as on notice.
  - Student request for action NOT required.
- Take immediate steps to investigate.
- Take any actions necessary to end sexual violence, eliminate a hostile environment or remedy its effects.
- Interim Measures
- **60 day** time frame from fact finding investigations to determination of sanctions and remedies for the complainant.
DEFINE POLICIES

- TITLE IX AND OCR
- CLEARY ACT/SaVE ACT
- FERPA
- VIOLENCE AGAINST WOMEN ACT
Clery Act: Overview

• Promotes campus safety by ensuring students, employees, parents and the community are informed regarding public safety and crime on campus.

• Applicable to schools that receive Title IV funding.

• Department of Education- no conflicts between Title IX and the Clery Act.
Violence Against Women Reauthorization Act (VAWRA)

- Additional categories to Clery Act reporting:
  - Domestic Violence
  - Dating Violence
  - Stalking
  - Additional hate crime categories:
    - national origin
    - gender identity
Clery Act & Title IX: Scope

- Clery Act
- Title IX
- VAWA

- Criminal Offenses
- Hate Crimes
- Sexual Harassment
- Sexual Violence
- Dating Violence
- Domestic Violence
- Stalking
Title IX
• Responsible Employee

Clery Act
• Campus Security Authority

• Crimes reported to Professional and Pastoral Counselors do NOT need to be disclosed
Family Education Rights and Privacy Act (FERPA)

- Two primary purposes:
  - First, to guarantee parent/guardian access to a student’s education records
  - Second, to limit disclosure to others.

- Title IX goals override FERPA
Title IX & FERPA

• School may notify Complainant of:
  – Investigation and hearing disposition
  – Remedies offered to Complainant
  – Sanctions imposed on Perpetrator that are directly related to Complainant
  – Other steps school has taken to eliminate hostile environment and prevent recurrence.

• Perpetrator may not see Complainant’s name or identifying information when inspecting the Complaint against him/her.
<table>
<thead>
<tr>
<th>Defined Components and Expectations</th>
<th>Campus Status</th>
<th>Campus Action Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide a Notice of non-Discrimination</td>
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<tr>
<td>A Designated Title IX Coordinator with notification to all students and employees of their title and contact information</td>
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<tr>
<td>Defined and Published statements against sexual violence and definitions clarifying the meaning of sexual violence.</td>
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<tr>
<td>Defined and published procedures for reporting and responding to allegations of sexual violence.</td>
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<tr>
<td>A published definition of consent in reference to sexual activity.</td>
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<tr>
<td>Defined and published sanctions or protective measures an institution can utilize following a final determination of an act of violence.</td>
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<tr>
<td>A commitment by the institution to provide any victim a written explanation of their rights and options.</td>
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<td>Impartial and prompt investigation by individuals who have been trained</td>
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<tr>
<td>Protocols in providing both the accuser and accused equal opportunity to be heard</td>
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<tr>
<td>Institutional protection of confidentiality and provision for needed logistical alterations as appropriate to prevent recurrence of sexual violence</td>
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<tr>
<td>Defined and communicated options for bystander intervention</td>
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<tr>
<td>Information regarding interim measures</td>
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</table>
Policy Requirements


1. Notice of Non-Discrimination- prohibition of sexual discrimination and commitment to address sexual misconduct

2. Scope of the policy- programs, locations and activities covered by the policy.
   – policy applies to third parties and different sexual orientations

3. Confidentiality policy- defining pastoral and professional counselors and requests for confidentiality

4. Adequate definitions of sexual harassment, sexual assault, hostile environment, dating violence, domestic violence, stalking, retaliation,

5. Options for Assistance
   – Immediate Assistance- emergency personnel and emergency numbers, health care options
   – Ongoing Assistance- interim measures, academic accommodations, counseling and support

6. Title IX Coordinator information
Policy Requirements

7. Title IX Reporting Protocols- explain students method of formal reporting and school’s reporting requirements
   – Formal reporting options for students
   – Third party and anonymous reporting
   – Amnesty provided if sexual violence was in violation of other student conduct policies (i.e.- drug or alcohol abuse)

8. Investigation and Procedural Protocols
9. Grievance Adjudication Procedures
10. Prevention and Education
11. Training
### Title IX Institutional Structure

<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Employee (Who is obligated to report?)</td>
<td>Any employee who has the authority to take action to redress sexual violence; someone seen as a responsible employee by a student can be a responsible employee.</td>
</tr>
<tr>
<td>Title IX Coordinator</td>
<td>Oversee the institution’s response to Title IX reports and identify and address and systemic problems revealed by such reports. The Title IX Coordinator is to be informed of any report regarding sexual violence on campus.</td>
</tr>
<tr>
<td>VP of Student Affairs or Dean of Students</td>
<td>The VP of Student Affairs or Dean of Students role varies given institutional structures and designations.</td>
</tr>
<tr>
<td>Trained Investigative Team</td>
<td>Gather facts and determine if misconduct occurred. Retain investigative minutes and draft a final report for use in determining an adjudicated response. Determine how to best end the violence, eliminate any hostile environment and prevent recurrence. A Title IX coordinator can perform this function.</td>
</tr>
<tr>
<td>Trained Adjudicators Trained Staff Likely a Panel of Representatives</td>
<td>The Adjudicators determine the response to the Investigative Team’s findings.</td>
</tr>
<tr>
<td>Appeal Board or Designee Often the VP for Student Affairs</td>
<td>The Appeal Board or designee hears an appeal based on either a due process concern or new evidence. Both the complainant and alleged perpetrator have equal opportunity for an appeal.</td>
</tr>
<tr>
<td>Campus Support Systems Mental Health Counselors, Pastoral Staff, Crisis Managers</td>
<td>Provide professional mental health support within a confidential counselor-client relationship from the outset of an alleged report of misconduct.</td>
</tr>
</tbody>
</table>
Title IX Coordinator

• Must be trained on: Title IX, campus policies and procedures
• Must avoid conflicts of interest if Title IX Coordinator has other responsibilities (i.e. Dean of Students; Athletics Director)
• Title IX Coordinator’s information must be published for all students
  – including email address
Title IX Coordinator

• Supervises investigators and investigative process
• Responsible for training of investigators, hearing boards and appeals boards
• Must keep records of all activities
• Responsible for:
  – Gatekeeping
  – Notice of Investigation
  – Plan for investigation
  – Notice of potential violation (Charge Letter)
  – Notice of Hearing
  – Notice of Outcome
Responsible Employees

• Responsible Employee—
  – any employee who has authority to take action to redress sexual violence OR
  – has been given duty of reporting incidents to Title IX Coordinator or designee OR
  – an employee whom a student could reasonably believe has this authority or duty

• School policy should:
  – Define responsible employees
  – Make sure students know responsible employees

It’s your responsibility.
Responsible Employees

- Must report all known relevant details about alleged sexual violence to Title IX Coordinator including: names of all involved or present, date, time, location.
- Practice Pointer- train responsible employees on campus policies and procedures including investigations and referring students to confidential resources
  - i.e.- professors, university law enforcement, university administrators, athletic coaches, health personnel
Confidentiality

• OCR strongly supports students interest in confidentiality

• Confidentiality Request-
  – Student’s name not be disclosed to alleged perpetrators
  – Request to refrain from investigation

• Recommended that Title IX Coordinator handle these requests
Confidentiality

Initial Request
• School should inform Complainant
  • Hinder ability to respond to investigate
  • Hinder ability to pursue disciplinary action
  • School should explain that it protects against retaliation

Student Maintains Request
• Confidentiality of student vs. Safe and Non-discriminatory environment for all students

School Action
• If school can maintain confidentiality of student → investigate and take appropriate actions
• If school cannot maintain confidentiality of student → respond to the problem through other means (i.e.- increased monitoring, security, training and education materials to students and employees)
Weighing a Request for Confidentiality

- Risk of additional acts by perpetrator
- Risk of future acts of sexual violence under similar circumstances
- Other means of obtaining evidence (e.g. security cameras, personnel, physical evidence)
- Aggravating factors that create non-discriminatory environment
Confidentiality Exception: Certain Employees

• **Professional Counselors**- official responsibilities include providing mental health counseling to members of the institutions’ community and who is functioning within the scope of his/her license or certification.

• **Pastoral Counselors**- a person associated with a religious order or denomination, is recognized by that order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

• **Non Professional Counselors or Advocates**- e.g. on-campus sexual assault centers, victim advocacy offices, women’s centers or health centers.
  
  – **Note**- These employees should gather aggregate data for purposes of campus environment (e.g. nature, date, time and general location)
Policy Issues: Conflicts of Interest

• Title IX Coordinator
  – cannot be one whose normal job duties conflict with position (i.e.- dean of students)

• Investigators
  – policy and procedure to identify and eliminate conflicts

• Adjudication
  – policy and procedure to identify and eliminate conflicts
Policy Issues: Amnesty

• OCR does not want “chilling effect” on students reporting sexual violence and wants to emphasize that primary concern is student safety
• Institution may choose when it grants amnesty
• Alcohol and marijuana
• More serious drugs (i.e.- cocaine)
• Crimes (i.e.- child pornography)
Other Policy Issues

• Jurisdiction- institution should reserve right to exercise jurisdiction off campus
• Interim Measures
The Process

1. Incident
2. Preliminary Inquiry
3. Investigation
4. Hearing
5. Appeal
CAMPUS RESPONSE FLOWCHART

REPORT/COMPLAINT
- Alleged incident of domestic or sexual violence occurs
- Victim decides to report the incident.
- Incident is reported to a defined "responsible employee."
- Campus Title IX Coordinator is informed of the incident and ensure the alleged respondent and victim receives written notification of their rights and resources.

INVESTIGATION
- Fact gathering conclusions are provided to both the victim and accused for review and response. The team can offer recommendations for next steps.
- Conduct interviews with both the alleged victim and accused, along with relevant witnesses
- Document the detail of the interviews
- Provide equal access to all parties to reporting and review of written documentation.
- Trained Investigative Team begins the investigative process and consider the need for immediate steps to end threats of violence, any hostile environment or potential recurrence

DETERMINATION
- Determination is reached regarding whether or not misconduct occurred based on the "preponderance of evidence."
- Preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred)
- Trained Adjudicators receive the Investigative team notes, report and determination of events. They then consider an appropriate response to all parties involved.

OUTCOME/COMMUNICATION & GRIEVANCE APPEAL
- Communicate the outcomes and sanctions in writing to both the victim and the accused. Provide the option for appeal to all parties with written understandings of the appeal process. Typically this is managed by the VP of Student Affairs or a designee.
- Determine outcomes needed to end the violence, eliminate any hostile environment and prevent recurrence.

FIND CONCLUSION
- If no appeal, then the process is complete.
- If there is an appeal, process the appeal according to institutional procedures and reach a conclusion.
- VP of Student Affairs or designee communicates the outcome of the appeal in writing to both parties. The written communication should make clear the finality of the outcome and instructions on non-retaliation.
Investigations

• The process used to resolve complaints, including fact-finding, hearing and decision making processes to determine
  – whether or not the conduct occurred
  – what steps the campus will take to end the sexual violence, eliminate the hostile environment and prevent its recurrence

• Goals: adequate, reliable, impartial and prompt
• 60 Day timeframe
• Standard- Preponderance of the Evidence
Explaining the Preponderance Standard

- Insufficient Evidence
- Very Sufficient Evidence
- No Evidence
- Reasonable Preponderance
- Overwhelming Evidence
Investigations

• Practice Pointer- coordinate investigations with any other agency or office to multiple statements by witnesses

• May delay investigation if local law enforcement is gathering evidence.
  – Practice Pointer- institution must work proactively to learn when local law enforcement’s evidence gathering is complete
  – Get it in writing!

• All delays must be reasonable.
Investigators

• Who can be an investigator for your institution
  – Staff
  – Faculty
  – External investigations
• Investigators must be trained!
• When Title IX Coordinator or designee is not investigating, he/she should supervise investigation
• Beware of conflicts of interest
Investigator Competencies

• Title IX, institution policy and procedures
• Interviewing parties, witnesses
• Evidence collection
• Documentation of evidence
• Standard of Proof
• Understanding of modern culture and technology
Grievance Procedures

• Both parties must have equal opportunity to participate in the process (i.e.- presenting evidence, putting on witnesses).

• Design is up to institution

• Standard- Preponderance of the Evidence for ALL incidents
  – It is more likely than not (50.1%)

• Institution must maintain documentation of procedure
Informal Grievance Procedure

- Institution may establish a mediation type informal procedure
- Must be voluntary
- Cannot be used in cases of sexual assault or sexual violence
- Complainant may end this and go to formal process at any time
- Parties cannot be left to do it themselves. Must be done through a trained counselor, faculty or administrator.
Appeals

• Helpful in cases of:
  – procedural errors
  – introduction of previously unavailable evidence
  – sanction is substantially disproportionate of findings

• Must be available to both parties
Remedies

• Accused
  – Disciplinary action

• Complainant
  – medical services, counseling, academic support
  – changing living arrangements
  – changing courses to separate parties

• Broader Student Population
  – Training/Disseminating materials on sexual violence
  – Campus climate assessments
60 Day Title IX Process

1. Complaint or Notice- starts the clock
2. Preliminary Inquiry and determination for further investigation (is this a Title IX complaint?)- 2-4 days
3. Assignment to investigation team and Notice of Investigation- 2-4
4. Formal Investigation- 10-15 days
   – Witness interviews
   – Evidence gathering
60 Day Title IX Process

4. Notice of Charge/Hearing- 3 days
5. Adjudication- 10 days
   – Notice of Hearing
5. Notice of Appeal- 7 days
6. Appeal- 3-5 days
7. Notice of Final Determination- 7 days
8. Implementation of remedies/sanction- 5 days
Notices

• No notice during preliminary inquiry
• Notice of Investigation- before formal investigation
• Status notifications during investigation
• Notice of Hearing OR Notice of Outcome- after formal investigation
• Notice of Sanctions/Outcome- after adjudication
• Notice of Appeal
• Notice of Final Determination
Notice of Outcome

• To Complainant
  – Decision maker conclusion
  – Remedies provided
  – Sanctions or discipline imposed on the accused
  – Other steps taken by institution

• Cannot be a general statement, must state rationale!
Title IX Training

• OCR only states that training should be regular
• OCR does not give a minimum hours or preferred method of training
• Includes professors, school law enforcement, athletic coaches, health personnel and resident advisors
• Responsible Employees should be trained on
  – Title IX & Institution policy and procedure
  – Identifying sexual violence
  – Intake of student complaint
    • How best to discuss with student
    • Disclosing reporting obligations
    • Referral to confidential resources
  – Reporting to Title IX Coordinator
# CAMPUS CHECK

**Summary Check of Educational and Training Components**

Minimum recommendations by OCR as published in the DOE Questions and Answers on Title IX and Sexual Violence for Students

<table>
<thead>
<tr>
<th>EDUCATION AND TRAINING COMPONENT</th>
<th>CAMPUS RATING</th>
<th>ACTION STEPS</th>
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<tr>
<td>Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school’s policies</td>
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<tr>
<td>The school’s definition of consent applicable to sexual conduct, including examples</td>
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<tr>
<td>How the school analyzes whether conduct was unwelcome under Title IX</td>
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<tr>
<td>How the school analyzes whether unwelcome sexual conduct creates a hostile environment</td>
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<tr>
<td>Reporting options, including formal reporting and confidential disclosure options and any timeframes act by the school for reporting</td>
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<tr>
<td>The school’s grievance procedures used to process sexual violence complaints</td>
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<tr>
<td>Disciplinary code provisions relating to sexual violence and the consequences of violating those provisions</td>
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<tr>
<td>Effects of trauma, including neurobiological changes</td>
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<tr>
<td>The role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence</td>
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<tr>
<td>Strategies and skills for bystanders to intervene to prevent possible sexual violence</td>
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<tr>
<td>How to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance</td>
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<td>Title IX’s protections against retaliation</td>
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Title IX Training- Investigators and Adjudicators

• Title IX & Institution policy and procedure
• Interviewing and working with victims
• Particular types of sexual violence
• Standard of review
• Consent and role of drugs or alcohol
• Determining credibility and evaluating evidence in impartial manner
• Confidentiality
• Conducting investigations
Title IX Training Students

• OCR states that school should provide age appropriate training
• Recommend training at: orientation for new students; training for student athletes
Title IX Training Students

• Topics to Cover
  – Title IX and what constitutes sexual misconduct under school policy
  – Consent and what school considers to be consent
  – Reporting options-
    • resources to report
    • confidential (i.e.- counselors) and non-confidential (i.e.- responsible employees)
    • campus and local law enforcement
  – School’s grievance procedures
  – Potential sanctions for sexual misconduct and disciplinary code provisions relating to sexual misconduct
  – Role of alcohol and drugs and deliberate use of such to perpetrate sexual violence
  – Bystander intervention- strategies and skills
  – Title IX prohibition against retaliation

• Confidentiality
• Encourage students to report sexual misconduct
• Emphasize student safety and reporting- Amnesty
Creating a Culture of “Consent”

• Legal definitions
• Campus definitions
• Are there potential challenges in upholding both? Are there any points of difference in relation to legal understandings and institutional values?
  – Presumed sexual behavior?
  – The issue of “amnesty” in reporting?
Consent

Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”

1. Was there forced consent?—If yes = violation, If no = then ask....
2. Was there capacity for consent?—If yes, then ask #3, If no = concern for violation
3. Was there active (verbal and non) agreement for each act? If yes = no issue, If no = consider each act.
Creating a Culture of “Bystander Intervention”

• Intervention research suggests the human tendency to not intervene
  – Question of responsibility
  – Diffusion of responsibility

• Is this true on your campus? Examples?

• Effective strategies to engage an intervention mentality
  – Individually
  – Corporately
Managing Ambiguities

• Document the facts
  – Understand the required outcomes/expectations
  – Know your personal position/limitations

• Organize what you know

• Document assumptions

• Implement incremental steps

• Reflect on your personal emotional response

• Seek peer or external expert counsel
CASE STUDIES/EXEMPTIONS
Case Study: Harvard University Law School

• Investigation of Title IX Policy and application

• Grievance Procedures:
  – Standard: clear and convincing
  – Respondent allowed post hearing rights not afforded to complainant
Case Study: Harvard University Law School

• Policy Flaws
  – Did not address complaint by third parties. Jurisdiction statement needed to be broader
  – No written notice provided to Complainant
  – No statement to assure that school would prevent discrimination
  – No definition of sexual assault or violence
  – No explicit statement that Title IX and police complaint could be filed simultaneously
Case Study: Harvard University Law School

• Investigation Flaws
  – Length of time to resolve complaint (16 months)
  – Complainant could not participate in grievance process but respondent could
Exemptions

- Title IX does NOT apply to the schools controlled by a religious organization, ONLY to the extent Title IX is inconsistent with the religious tenets of the organization.
  - i.e.- Title IX would not require a religiously controlled organization that trains students for the ministry to offer such training to women if the organization’s religious tenets hold that all ministers must be men.
Requesting Exemption

• Letter Requesting Exemption to Department of Education Office of Civil Rights

• Letter should contain:
  – Identify religious organization/denomination that controls educational institution
  – Specify religious tenets which conflict with Title IX regulations
  – Should cite tenets from religious scripture
  – Should cite regulations which educational institution is seeking exemption from
George Fox University

• Title IX Housing Regulation: may not apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing.

• George Fox University
  – Jayce, transgender student asked to live in male housing.
  – School offered single apartment, separated from male students.
  – University requested exemption based on Meeting of Friends (branch of Quaker movement) belief stating all people are born male or female.
George Fox University

• Letter of Exemption
  – Owned by Friends (Quaker branch) because 4/7 Board of Trustee members must be Friends
  – Religious tenets presented by citation to Genesis and Matthew
  – University belief mirrors religious tenets
  – University belief conflicts with provisions of Title IX
George Fox University

• Exemption granted for housing (§106.32), access to facilities (§106.33) and athletics (§106.41)

• OCR Specifically stated that the exemption is limited
Title IX Resources/Newest Guidance

Resources
• Notalone.gov
  – Checklist for sexual misconduct policies
• Knowyourix.org
• United States Department of Justice- Title IX Legal Manual
• U.S. Department of Education- Office of Civil Rights

New Guidance from OCR
• April 2015
  – Title IX Resource Guide
  – Dear Colleague Letter on Title IX Coordinators
  – Letter to Title IX Coordinators
Q and A

• We are also available in the vendor area for additional conversation