

2021 YEAR-END REVIEW

JANUARY 20, 2022

©Institutional Compliance Solutions 2022 All Rights Reserved



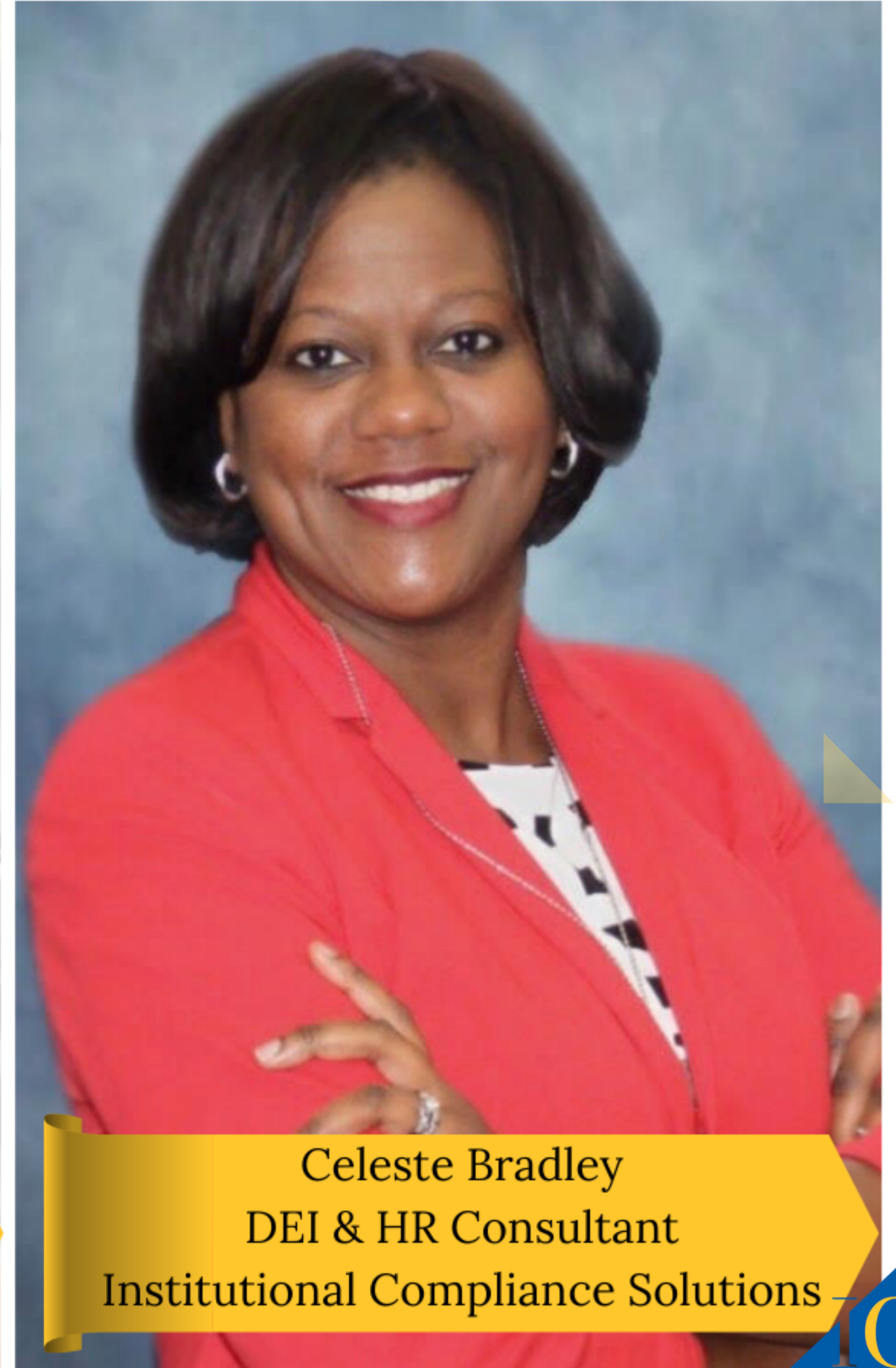
ABOUT US



Courtney Bullard
Founder
Institutional Compliance Solutions



Betsy Smith / K-12 Lead
Senior Investigator & Consultant
Institutional Compliance Solutions



Celeste Bradley
DEI & HR Consultant
Institutional Compliance Solutions

Agenda

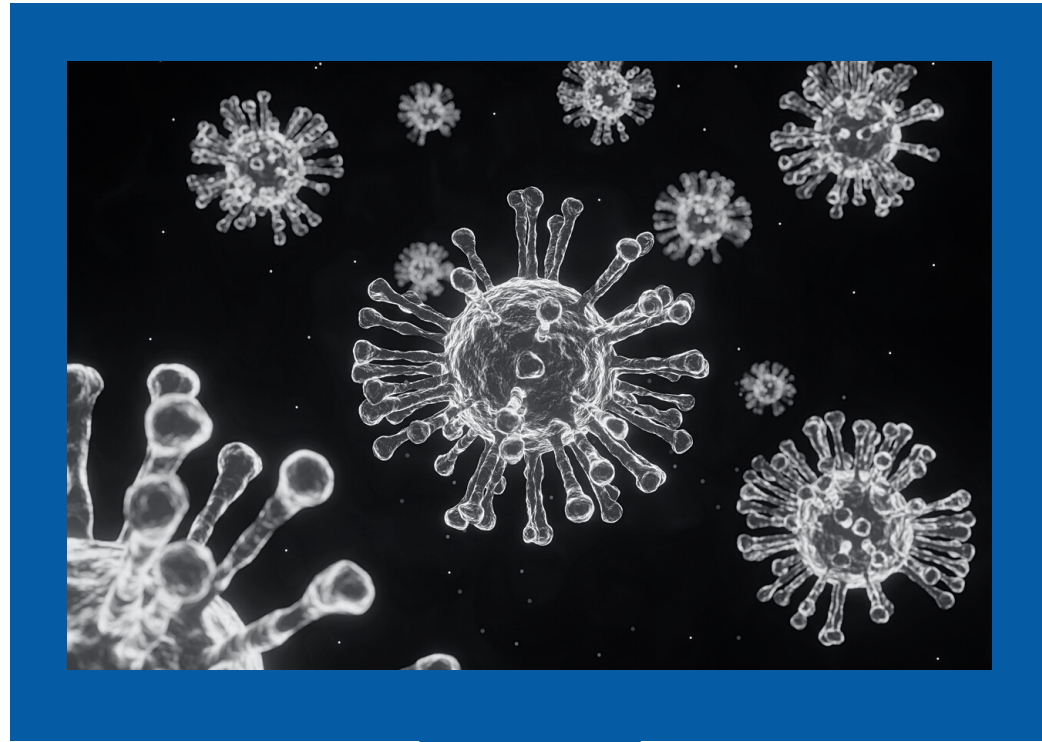
DOE/OCR
UPDATES

TITLE IX BEYOND SEXUAL
HARASSMENT
UPDATES

COVID AND
2021 REMINDERS

LITIGATION
UPDATES

PRACTICAL
TIPS



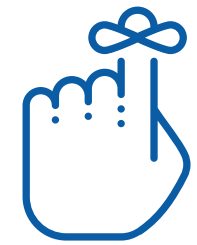
COVID PANDEMIC



REMOTE LEARNING & WORKING



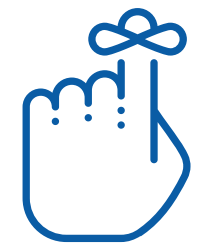
Reminders!



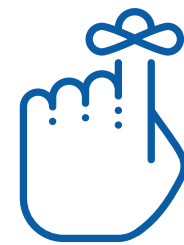
Check on-line reporting options



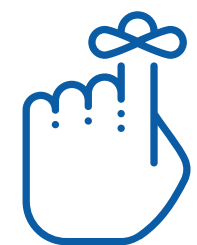
Communicate



Reasonable extensions of timelines



Document



Be equitable



Be kind

Updates in Title IX/ Sexual Harassment



©Institutional Compliance Solutions 2022 All Rights Reserved

STANDARDS

Judicial Standard vs. Regulatory Standard



Legal Primer & Reminders



Litigation from cases that date back several years



Title IX trials are almost non-existent



What constitutes a "win"?



Injunctions



LITIGATION TRENDS



Complainant Litigation



**TITLE IX:
DELIBERATE
INDIFFERENCE**



**BREACH
OF
CONTRACT**



NEGLIGENCE

Complainant Litigation

CASES OF NOTE:



Davis v. Monroe County Board of Education **(1999)**

Peer harassment; liable where school is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and harassment is so severe, pervasive and objectively offensive it deprives victim of access to educational opportunities or benefits provided by the school

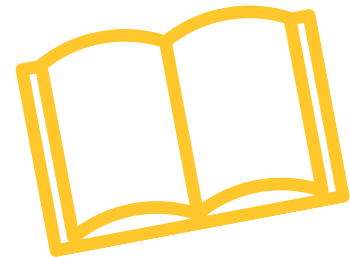


Gebser v. Lago Vista Independent School District **(1998)**

Teacher-student harassment; "appropriate person has actual knowledge of sexual harassment and fails to adequately respond"; "appropriate person" is an official of the school who has the authority to take corrective action to end the discrimination

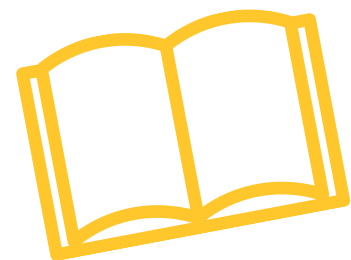
COMPLAINANT LITIGATION

Cases of Note:



Does v. Liberty University

- Multiple complainants/plaintiffs
- Allegations of ignored sexual harassment
- Allegation of pressure to pursue informal resolution



University of Nebraska

- 2 cases - one brought by multiple plaintiffs
- One case survived Motion to Dismiss

COMPLAINANT LITIGATION



Douglass v. GGCC

Harassment and intimidation by detective

Jury Verdict

Former student awarded \$300K in Title IX suit against Chadron State: College failed to protect student after reported sexual assault

Domestic / Interpersonal Violence

McCluskey Death:

\$13.5 million dollar settlement (Utah)

Hall v. Millersville University (Jan. 2022)



Nassar victims reach \$380 million settlement



UM reaches \$490 million settlement with Anderson accusers

©Institutional Compliance Solutions 2022 All Rights Reserved

Respondent Litigation



TITLE IX



DUE PROCESS



BREACH OF
CONTRACT



Michigan State

Football player claims rights violated when suspended from team before investigation conclusion



University of Wisconsin Madison

Former football player alleges rights violated when used as a "scapegoat"

Doe v. St. John's University



Cross Complaints

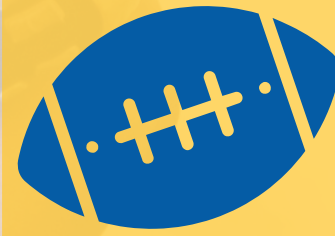


Anti-male bias; erroneous outcome allegations

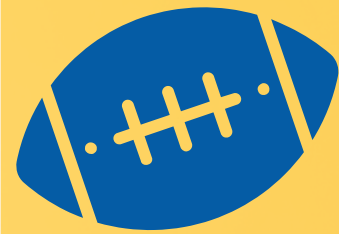


No hearing; note re: application of 2020 Title IX regulations

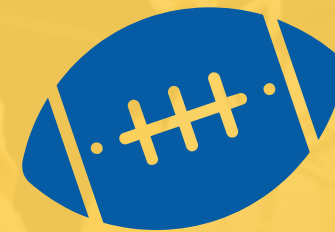
John Doe v. St. Regents Univ. of MN



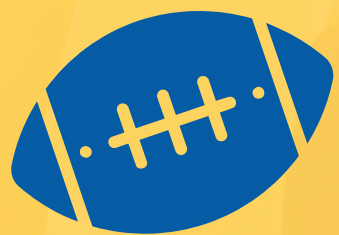
10 football players allege race & sex discrimination



Allegations of bias by Univ. b/c of internal & external pressure



Allegations of retaliation for exercising right to a hearing - not successful



Allegations of race discrimination dismissed

Respondent Litigation



Fordham

Professor sues after he was fired for performing a sexual act over Zoom; claims wrongful termination for medical issue

Pacific University

- Hughes: Forced out b/c of medical leave
- Fired after being accused of discrimination
- Suspended re: inappropriate comments

Faculty Misconduct



FSU determines three professors committed sexual misconduct



Toxic Culture by Head Professor at UW Madison



University of Michigan: Philbert Investigation



Greek Life

- USC Protest
- San Diego State sued by former fraternity member over hazing allegations



ICS
INSTITUTIONAL
COMPLIANCE SOLUTIONS



LSU

Investigation into handling of:



Sexual Harassment



Employee Discipline



State Law Implications



Victim Rights Law Center et al. v. Cardona,

No. 1: 20-cv-11104, 2021 WL 3185743
(D. Mass. July 28, 2021)

©Institutional Compliance Solutions 2022 All Rights Reserved



August 24, 2021

Letter to Students, Educators, and other Stakeholders re: "Statements"

"In practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance"



Department of Education/ Office for Civil Rights



2020 Title IX Regulations Sub-Regulatory Guidance



INSTITUTIONAL
COMPLIANCE SOLUTIONS

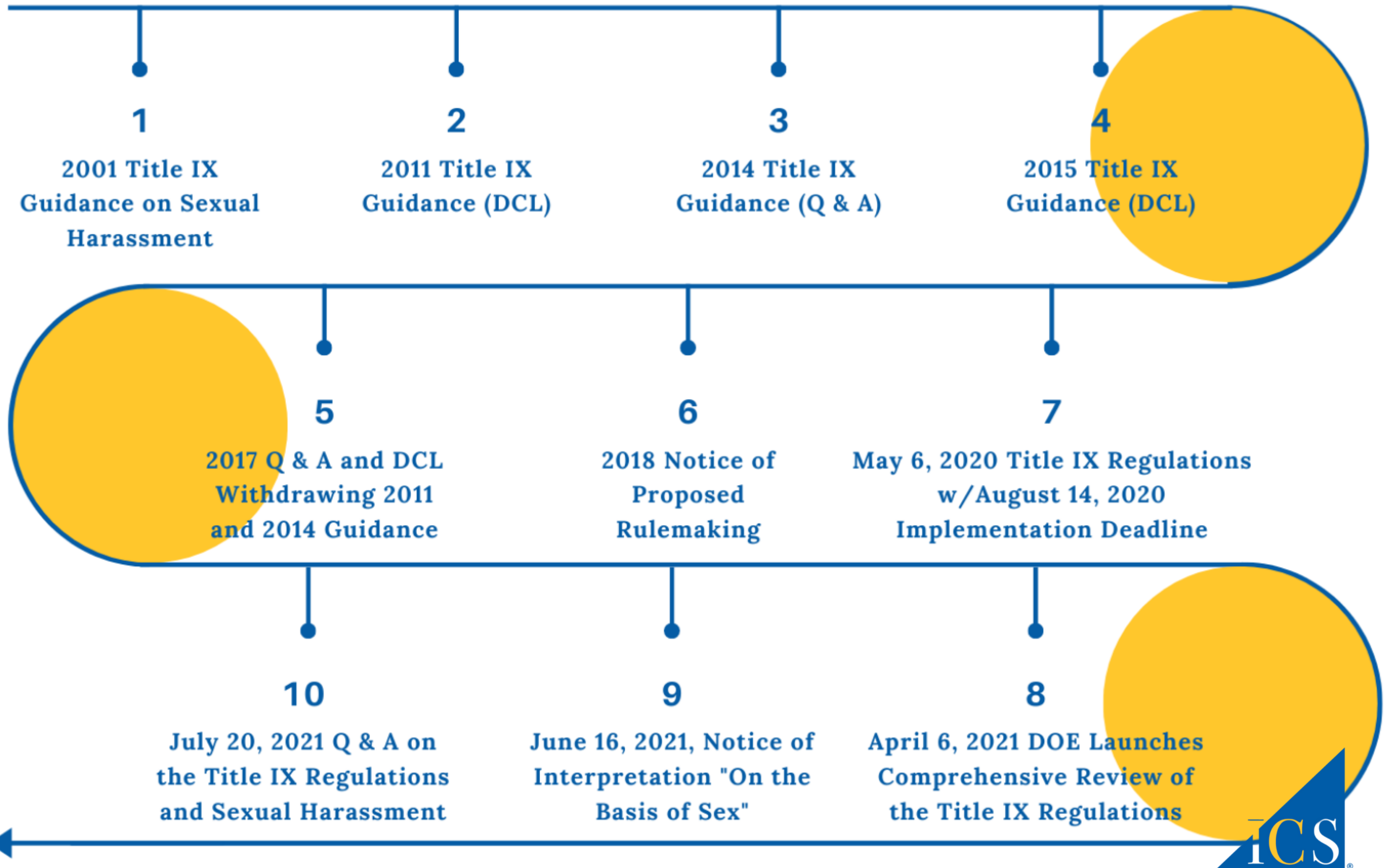


Dr. Miguel Cardona
Secretary of Education



Catherine Lhamon
Assistant Secretary for Office of Civil Rights

The Evolution of Title IX



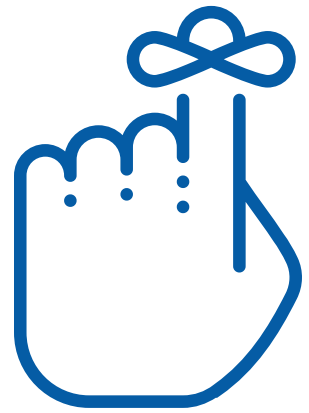
EXPECTED

April
May 2022

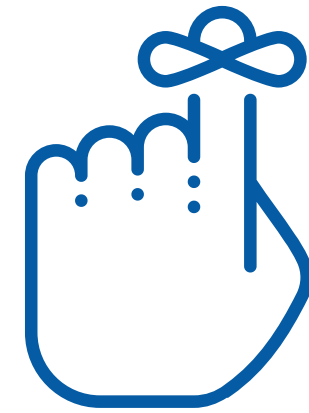
Title IX Rule

Changes/Amendments

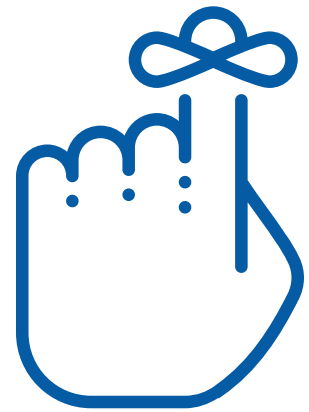
Reminders!



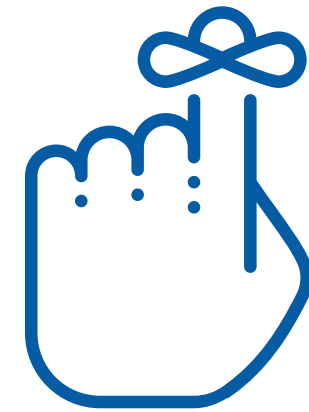
2020 regulations still in effect/enforced by OCR



Q&A provided additional guidance, including when complainant/respondent no longer with institution/school



Prescriptive process



Mandated Training/
Posted Training

What's next in Title IX / Sexual Harassment?

Three Standards



✓ **Pre-2020
Regulations**

August 14, 2020

✓ **2020
Regulations**

Through 2023?

✓ **2023 &
Beyond**

Title IX Beyond Sexual Harassment







Religious Exemptions:

Students at religious colleges sue DOE to challenge Title IX religious exemptions; Student at Lincoln Christian files to be a class member.

*DOE will initiate investigation of LCU.

Hunter v DOE

Court held that, "religious exemptions encompasses...divinity schools, like Fuller, that are controlled by their own religiously affiliated Board of Trustees."

Fuller Theological Seminary

Pregnancy Discrimination

Townson Univ.

Plaintiff alleges firing b/c of her gender, pregnancy & in retaliation for reporting discrimination

Notre Dame

Former assistant swimming coach sues for "pattern of discrimination" during pregnancy and after birth.

Belmont Univ.

Female students complain discriminated against when disclosed pregnancy



Title IX: Athletics

UConn Women's
Rowing Team Title
IX Victory -
December 29, 2021

University of Iowa
\$400,000 Settlement

Appeals Court Upholds
Settlement in Decades Old Title
IX Case with Brown University

NCAA and Title
IX



Discrimination based on sex under Title IX

Sexual Orientation/Gender Identity (SOGI)

- ***Bostock v. Clayton County***
 - Supreme Court held Title VII prohibition on discrimination based on sex covers discrimination on the basis of gender identity and sexual orientation

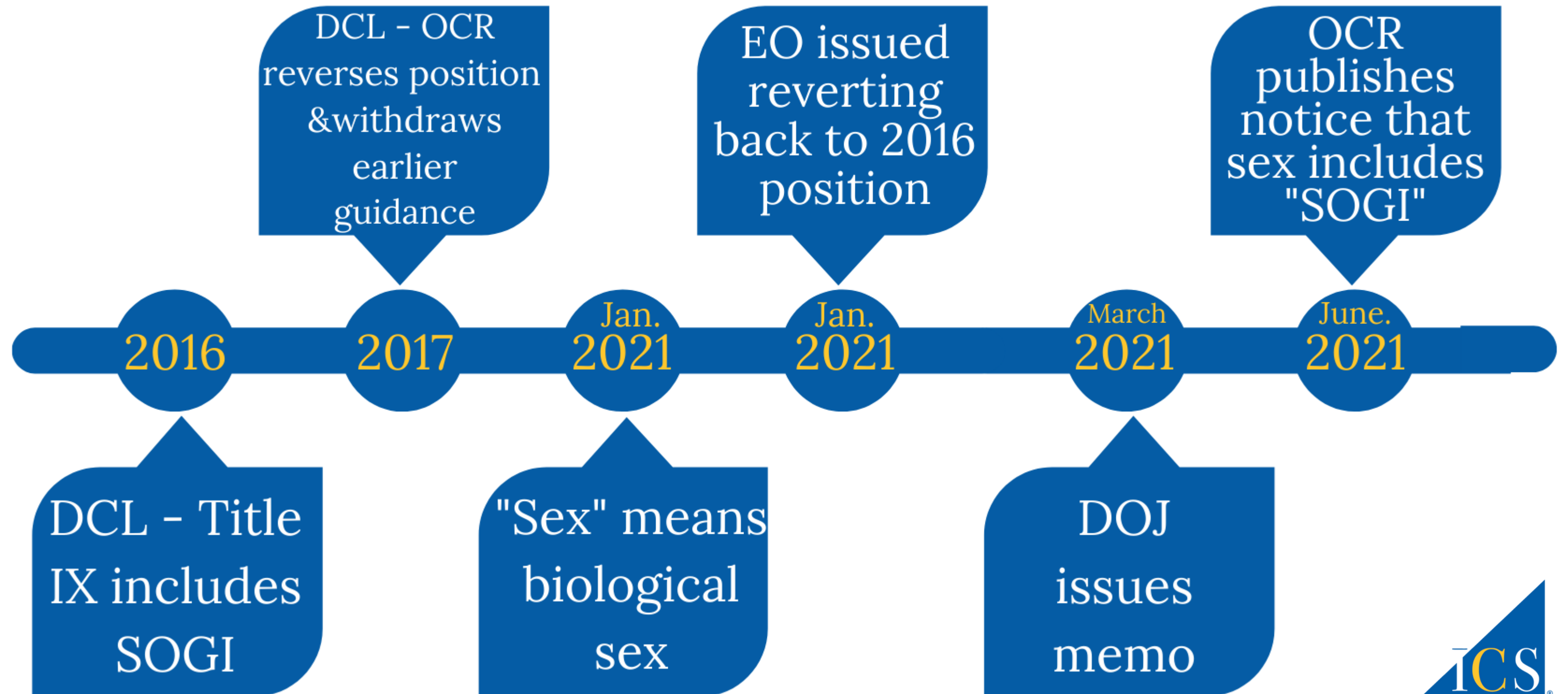


INSTITUTIONAL
COMPLIANCE SOLUTIONS

©Institutional Compliance Solutions 2022 All Rights Reserved



Evolution of Sub-Reg guidance re: SOGI under Title IX



- *Grimm v. Gloucester County School Board*
 - Access to bathroom
 - Lower court found discrimination on basis of gender non-conformity
 - Supreme Court initially took case, then vacated writ
 - Denied second petition



INSTITUTIONAL
COMPLIANCE SOLUTIONS



Photo: Scout Tufankjian / ACLU

University of Pennsylvania

ICS
INSTITUTIONAL
COMPLIANCE SOLUTIONS

Transgender Laws



State
Laws

OCR/
EEO

Closing Thoughts...

1. Compliant Policies/Procedures
2. Follow Policies/Procedures
3. No silos



Note:

Not defining process for:

Discrimination based
on sex that does not
fall under Title IX
Sexual Harassment



Retaliation



Culture of
discrimination/
harassment



Reminder



CLOSING THOUGHTS

TITLE IX COMPLIANCE
IS MORE THAN SEXUAL
HARASSMENT

CONTINUES TO
EVOLVE IN
SEXUAL
HARASSMENT
AND BEYOND

2022 BUSY YEAR IN
TITLE IX

Questions?



INSTITUTIONAL
COMPLIANCE SOLUTIONS

Connect With Us!



- Institutional Compliance Solutions
- Courtney Bullard
- Betsy Smith
- Celeste Bradley



Institutional Compliance Solutions
Groups:
Title IX Coordinators Closed Group
K-12 Title IX Coordinators

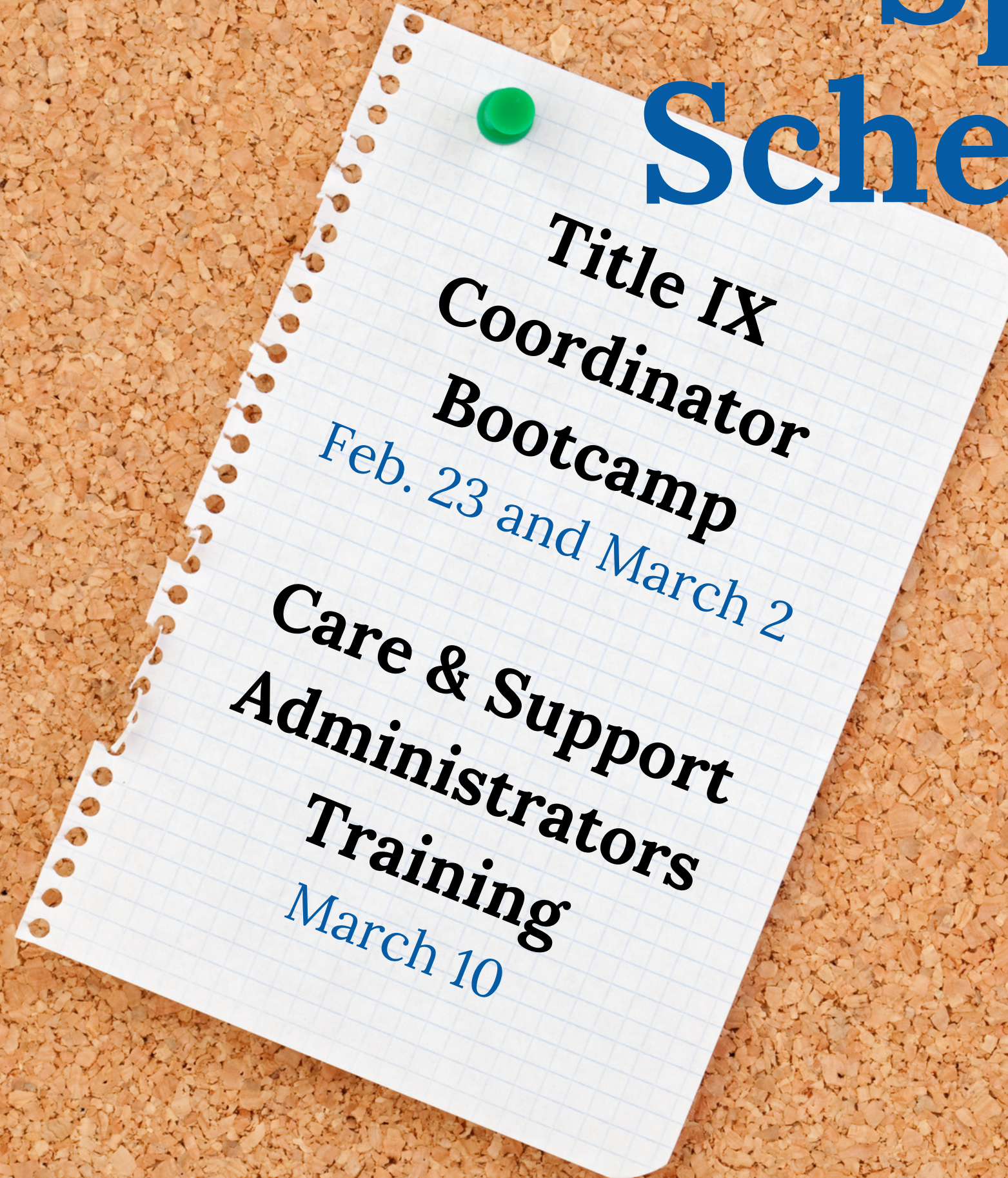


@TitleIXLawyer



@ICSLawyer

Spring Schedule:

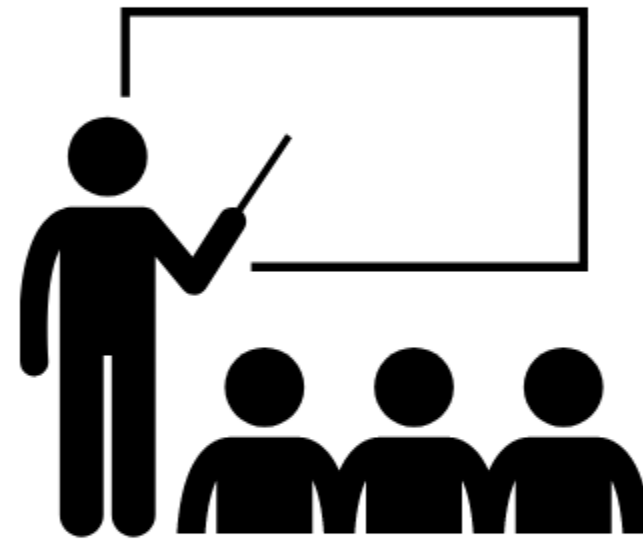


INSTITUTIONAL
COMPLIANCE SOLUTIONS

How Can We Help?



**Community
Access**



**Tailored
Training**



**Ongoing
Support**