

# 2021 YEAR-END REVIEW

JANUARY 20, 2022

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# ABOUT US



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# Agenda

DOE/OCR  
UPDATES

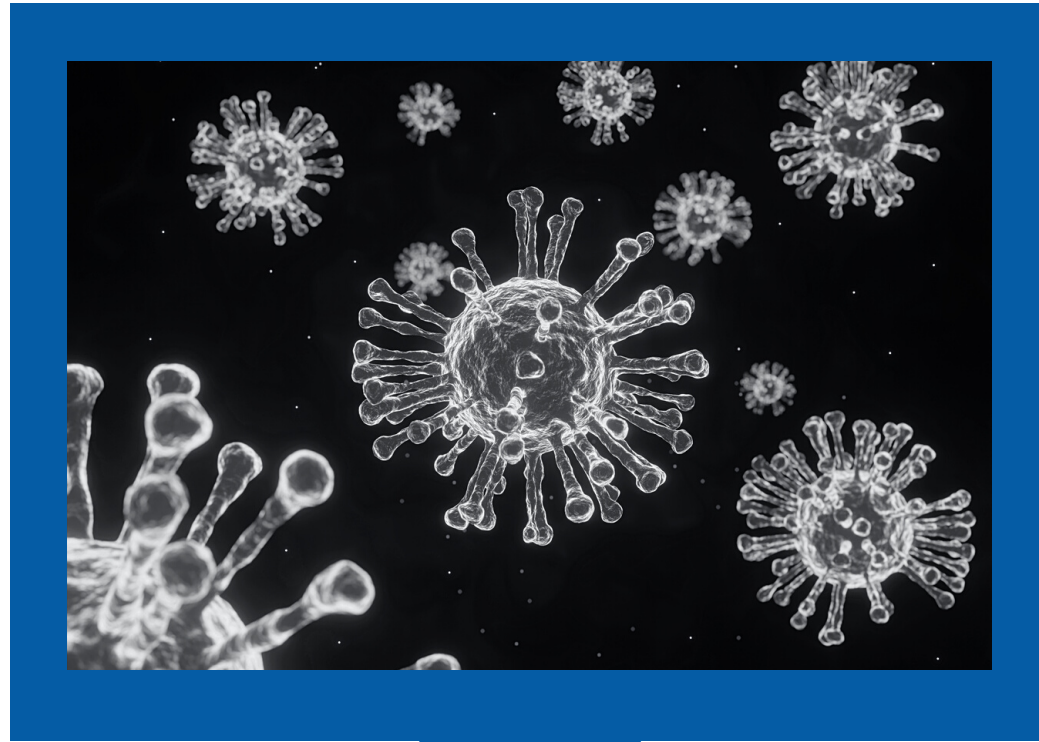
TITLE IX BEYOND SEXUAL  
HARASSMENT  
UPDATES

COVID AND  
2021 REMINDERS

LITIGATION  
UPDATES

PRACTICAL  
TIPS





## COVID PANDEMIC

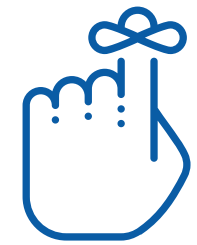


## REMOTE LEARNING & WORKING





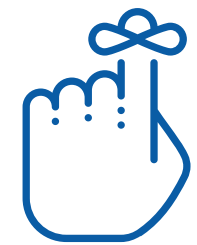
# Reminders!



Check on-line  
reporting options



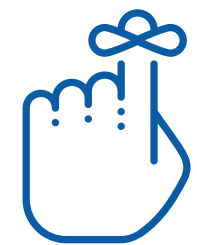
Communicate



Reasonable extensions  
of timelines



Document



Be equitable



Be kind



# Updates in Title IX/ Sexual Harassment



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# STANDARDS

Judicial Standard vs. Regulatory Standard



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# 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

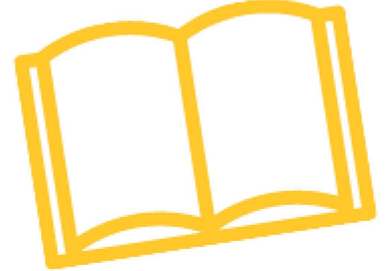


NEGLIGENCE



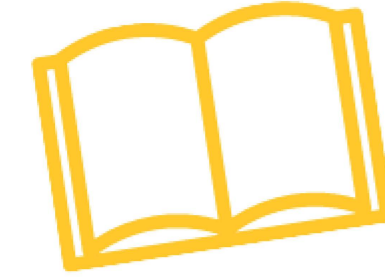
# Complainant Litigation

## 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

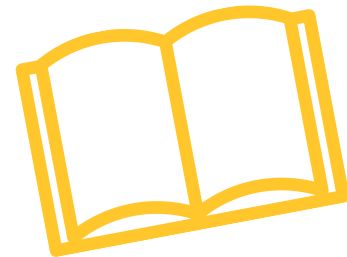


### ***Gebser v. Lago Vista Independent School District*** **(1998)**

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

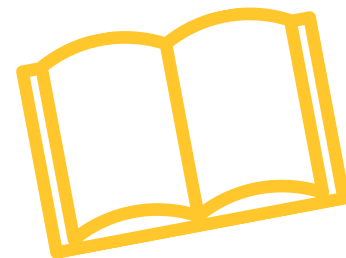
# COMPLAINANT LITIGATION

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)**



A female gymnast with long brown hair in a ponytail is performing a handstand on a blue mat. She is wearing a blue leotard with green and yellow accents. Her legs are split wide, and her arms are extended upwards. The background is a light blue wall.

# Nassar victims reach \$380 million settlement





# UM reaches \$490 million settlement with Anderson accusers

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# Respondent Litigation



TITLE IX



DUE PROCESS



BREACH OF  
CONTRACT



# Respondent Litigation



## 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**



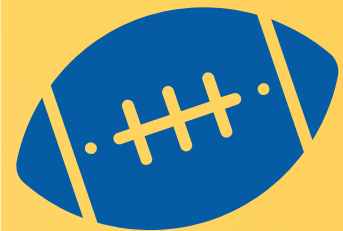
**No hearing; note re: application of 2020 Title IX regulations**



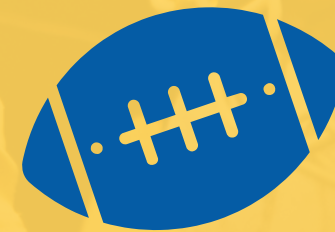
# John Doe v. St. Regents Univ. of MN



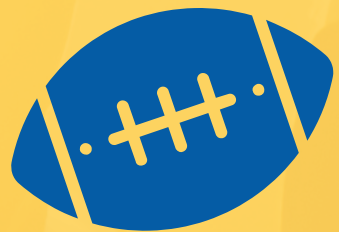
**10 football players allege race & sex discrimination**



**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



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# Greek Life

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

**ICS**  
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# 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)

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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





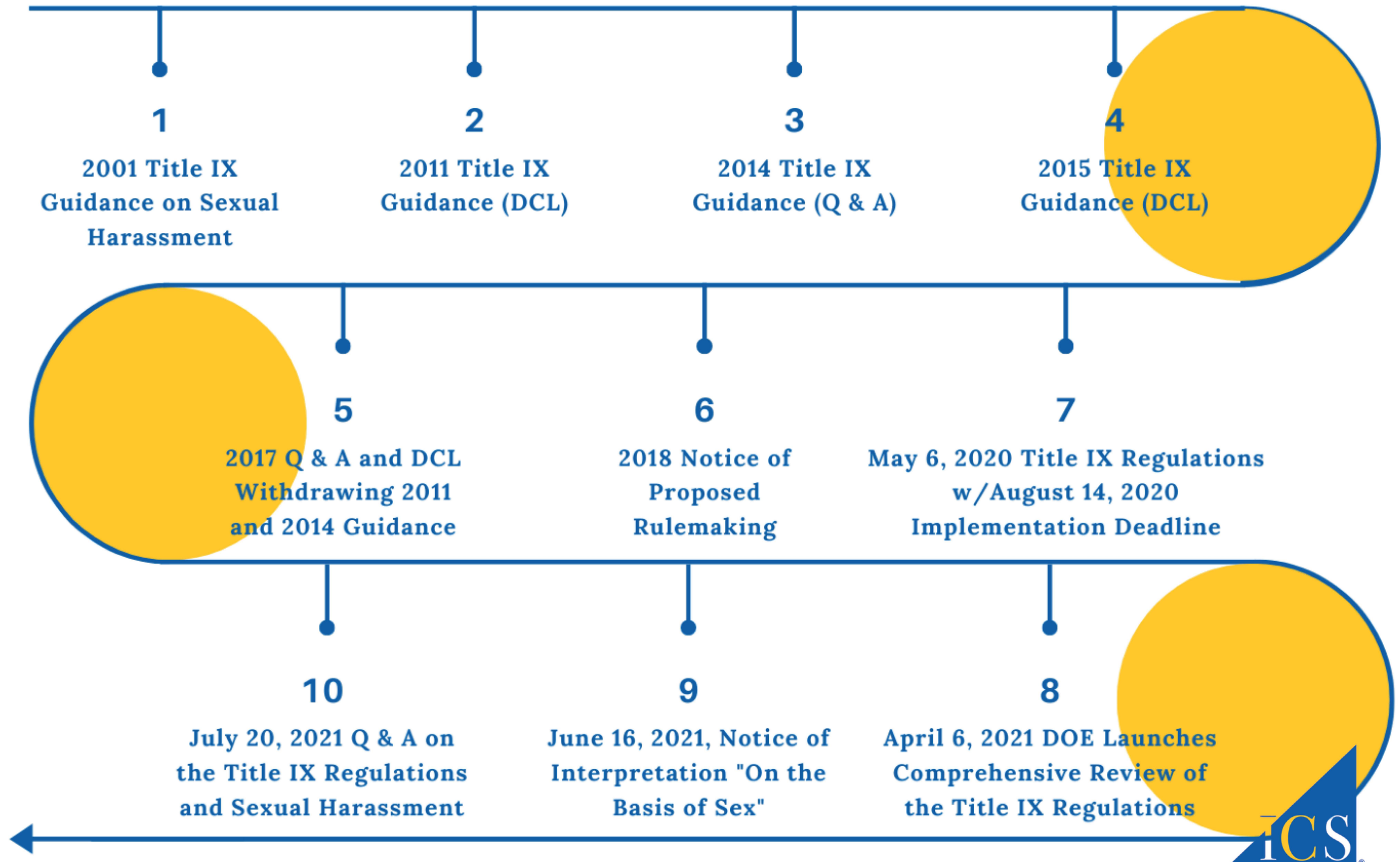
**Dr. Miguel Cardona**  
Secretary of Education



**Catherine Lhamon**  
Assistant Secretary for Office of Civil Rights



# The Evolution of Title IX



**EXPECTED**

April

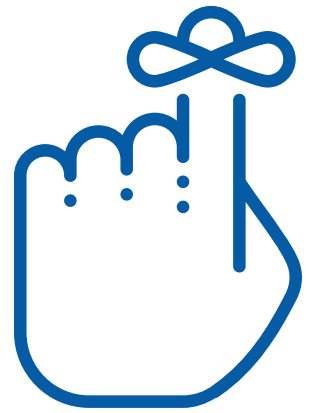
May 2022

Title IX Rule

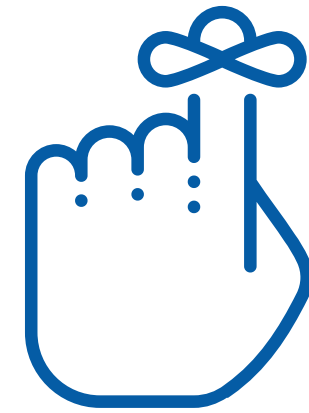
Changes/Amendments



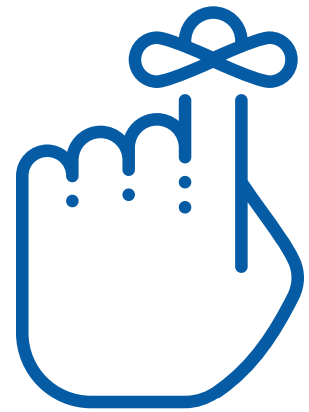
# Reminders!



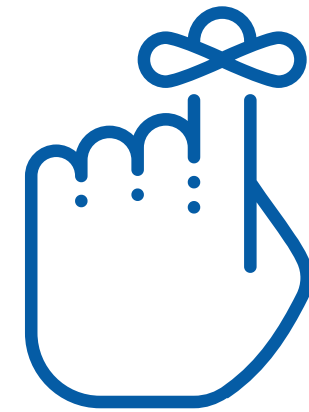
2020 regulations still in effect/enforced by OCR



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







# Title IX Discrimination

Sexual  
Harassment

Athletics

SOGI

Pregnancy





# 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

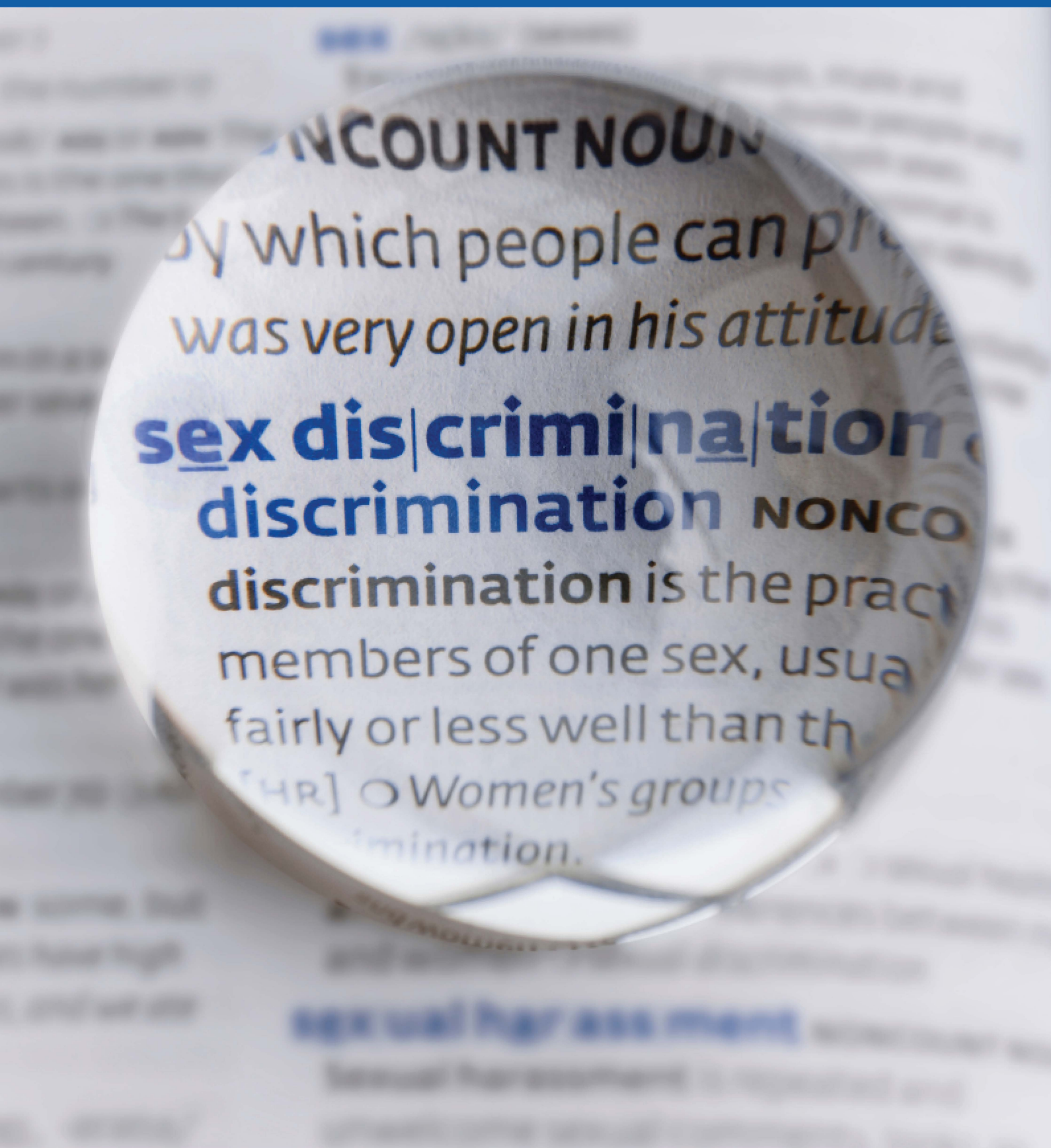
UConn Women's  
Rowing Team Title  
IX Victory -  
December 29, 2021

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



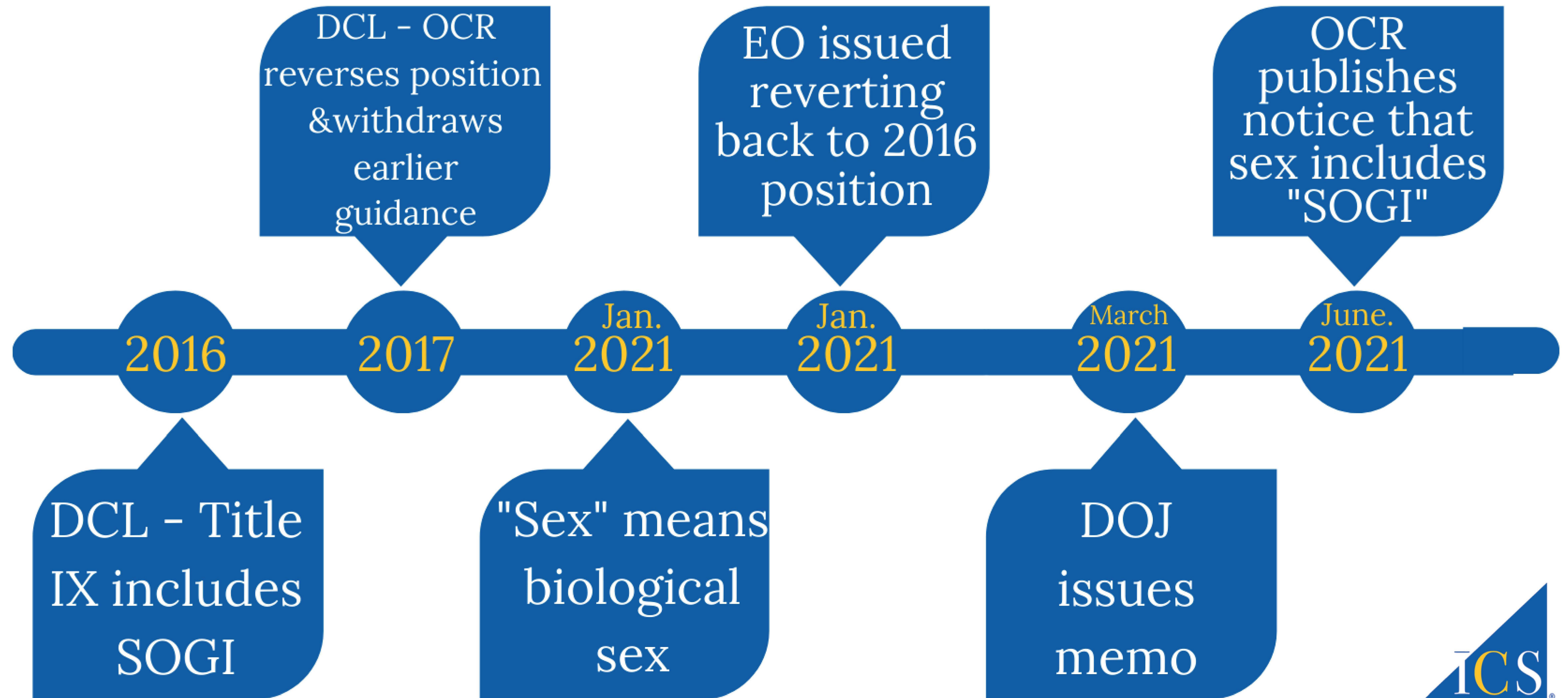
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# Evolution of Sub-Reg guidance re: SOGI under Title IX





- *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





# University of Pennsylvania



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# 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?



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# Connect With Us!



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



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Groups:  
Title IX Coordinators Closed Group  
K-12 Title IX Coordinators

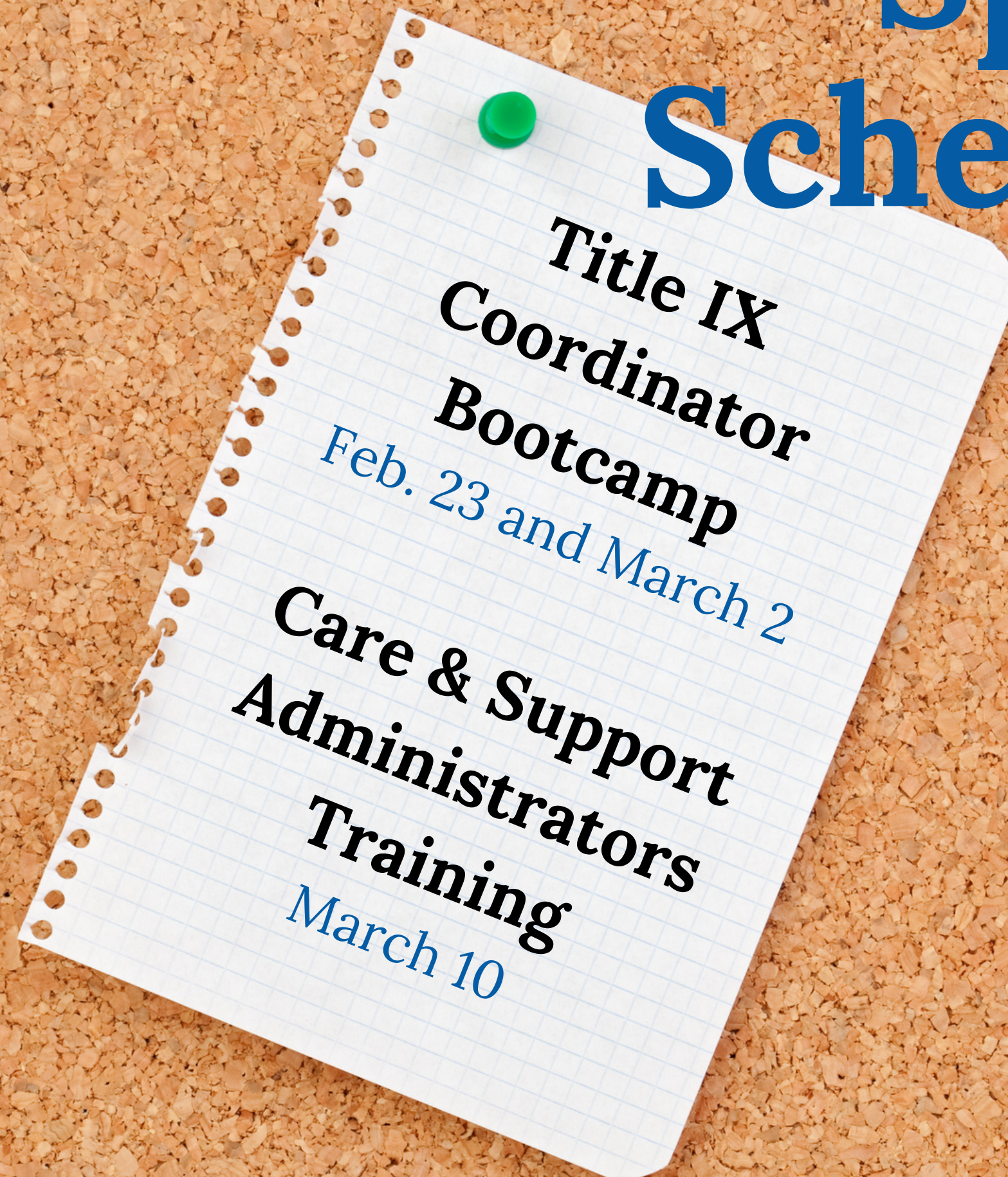


@TitleIXLawyer



@ICSLawyer

# Spring Schedule:

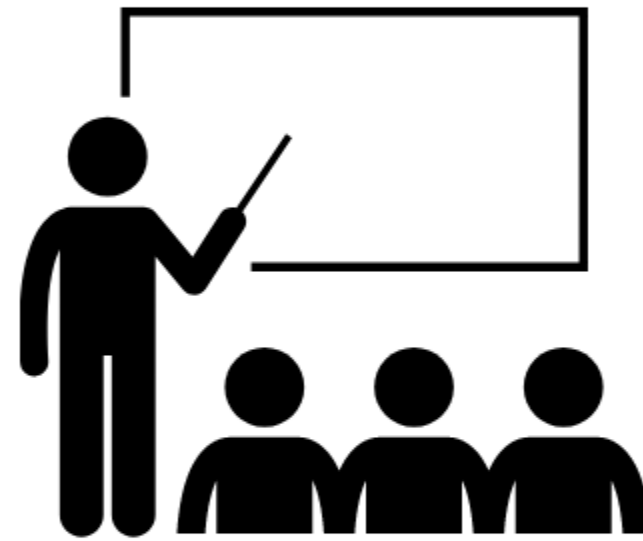




# How Can We Help?



**Community  
Access**



**Tailored  
Training**



**Ongoing  
Support**