UNDERSTANDING TITLE IX
& THE IMPACT ON HIGHER EDUCATION

presented by

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Isn’t it a law about students?
Doesn’t it only apply to athletics?
“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 educational program or activity receiving federal financial assistance.”

Title IX of the Education Amendments of 1972 Implementing Regulations at:

Title IX

- Federal Law enacted in 1972
- Intended to end sex discrimination in all areas of education, including in employment
- Made non-discrimination based on sex/gender a condition of participation in all federally funded education programs for both public and private institutions
- It applies to educational program equity, such as in athletics, and also to sexual harassment and sexual assault
- Compliance with the law is overseen by the U.S. Dept. of Education, Office of Civil Rights

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An individual may assert a Title IX claim against the institution by:

(1) Sue the institution in court and seek money damages or injunctive or declaratory relief

And/Or

(2) File an administrative complaint, a grievance with U.S. Dept of Ed Office Of Civil Rights (OCR)
Civil Law Suits v. Administrative Action & Title IX

**Law Suit**
- File in Federal Court
- Monetary damages, injunction
- Requires:
  - Actual Notice
  - Employee with authority to take action
  - Deliberate Indifference

**Administrative Action**
- Initiated by OCR
- Voluntary compliance or findings
- Requires:
  - Actual OR Constructive Notice ("knew or should have known")
  - Investigate – End harassment – Remedy Impact – Prevent recurrence

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Why Is Title IX a Big Deal???
Relevant Statistics

- 20-25% of college women will be victims of attempted or actual sexual assault
- 6% of undergraduate college men will be victims of attempted or actual sexual assault
- 13% of college women report being stalked each year
- 4 in 10 violent crimes against college students are committed by offenders perceived by the victim to be using drugs or alcohol

Campus Sexual Assault Study Final Report. (Christopher Krebs, et al.)
National Criminal Justice Service, 2007
Relevant Statistics

- Between 80 and 90 percent of cases, the victim and perpetrator know each other.
- The more intimate the relationship, the more likely it is for a rape to be completed rather than attempted.
- Half of all student victims don’t label the incident “rape.” This is particularly true when no weapon was used, no sign of physical injury is evident, and alcohol was involved.
- Fewer than 5% of student victims report to authorities or law enforcement.

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Impact of Sexual Assault on Those Involved

TO THE VICTIM

- Falling Grades
- Drop out/Fail out
- Mental Health Issues
  - Depression, Post-traumatic stress disorder
  - Alcohol and drug use
  - Contemplation of suicide

TO THE ACCUSED

- Time lost from class
- Potential expulsion from school
- Impact on ability to obtain a medical license, or get recommendations
- Stigma of “rapist”
Impact of Sexual Assaults on the Institution

- Impact of victim accommodations on system and people
- Retention
- Legal liabilities
- Reputation
- Demands on fiscal resources
- Demands on human resources
- Safety concerns for the community

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Regulatory Oversight of Title IX

U.S. Department of Education
Office of Civil Rights (OCR)
The Office for Civil Rights (OCR) is responsible for establishing the compliance standards to be applied in investigations and enforcement of Title IX regarding sexual harassment.

OCR requires that once a school has notice of possible sexual harassment of a student, the school should take immediate and appropriate steps to:

- Investigate what occurred
- Take prompt and effective action to end the harassment
- Remedy the effects
- Prevent the recurrence.
If the institution has notice of sexual misconduct, these four steps are the school’s responsibility whether or not the student who was harassed makes a complaint or otherwise asks a school to take action.

OCR acknowledges that there may be circumstances where the complainant requests confidentiality or refuses to participate, thus, the school’s ability to take action may be limited...

- BUT - the school is still required to take all reasonable steps to investigate and respond.

OCR applies a severe, persistent, pervasive standard when assessing if an incident of sexual misconduct was a discriminatory based violation.
OCR Title IX Compliance Requirements

- Publication of Policies and Procedures that includes:
  - Non-discrimination Statement
  - Effective reporting and response protocol
  - Appropriate grievance procedures
  - Fair and equitable investigations
  - Equitable remedies
  - Prevent recurrence
  - Incorporate training
  - Appoint a Title IX Coordinator

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# The IX Commandments

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<th>Thorough</th>
<th>Reliable</th>
<th>Impartial</th>
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<tr>
<td>Prompt</td>
<td>Effective</td>
<td>Equitable</td>
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<tr>
<td>End the Discrimination</td>
<td>Prevent its Recurrence</td>
<td>Remedy the effects upon the victim &amp; community</td>
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A responsible employee includes any employee who:

- Has the authority to take action to redress the harassment,
- Has a duty to report harassment or other types of misconduct to appropriate officials,
- Or
- Is someone a student could reasonably believe has this authority or responsibility
Colleges and universities should ensure that employees are trained so that:

- Those with authority to address harassment know how to respond appropriately
- Other responsible employees know that they are obligated to report harassment to appropriate officials, what to report and to whom
Basic Training Topics for Responsible Employees

- The institution’s policies, procedures and resources
  - Sexual Misconduct Policy for student-student harassment
  - Sexual Harassment Policy for staff-student harassment
  - Brochure of Sexual Misconduct Resources & Reporting Options
- The College’s expectation for reporting incidents of sexual assault and harassment, must know
  - What to tell
  - Who to tell
  - How to tell
  - When to tell

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Where to Report Information Regarding a Sexual Misconduct Offense

- Information regarding a sexual misconduct offense can be reported to the Campus Police, Title IX Coordinators, or to one of the Deputy Coordinators.

- **Title IX Coordinators:**
Where to Report Information Regarding a Sexual Misconduct Offense

- Deputy Coordinators
In 2012 there was a joint agency investigation of the University of Montana by the DOE and DOJ. It resulted in a Resolution Agreement this spring by the University to comply with Title IX. This Resolution Agreement was distinctive because it was created not only for University of Montana but as a “Blueprint for Colleges and Universities throughout the country to protect students from sexual harassment and assault”.
Some Significant Elements of the Montana Agreement

- An important element is the emphasis on creating greater uniformity between many sexual harassment policies and procedures.
  - What does this mean for unifying processes on your campus?

- The Agreement requires Montana to ensure that policies and procedures provide an easily accessible and user-friendly system, using consistently defined terms and reporting options.
The Montana Agreement notes the institution’s policies and procedures must include a requirement that all employees who are aware of sex-based harassment, except those who are statutorily prohibited from reporting, must report it to the Title IX Coordinator within 24 hours, regardless of whether a formal complaint was filed (pp 3-6).

WHAT DOES THIS MEAN FOR YOUR CAMPUS?
More Important Montana Messages

Some Guidance on Policies & Procedures

- The institution must ensure the content, distribution and location of policies and procedures effectively inform students, faculty and staff.
- Make your website easy to navigate and include all the information in hyperlink (Use the “3 Click Rule”)
- Ensure that there is specific information on where and how to report a complaint (p. 11)
More Important Montana Messages

Training

- All faculty and staff, particularly those to whom students will report sexual assault, must receive training on how to discuss sexual assault with students; the discrimination prohibitions of Title IX; the institution’s Title IX obligations and complaint process; and how to clarify the criminal and non-criminal consequences of reporting.
The institution has an obligation to respond to student-on-student sexual harassment that initially occurred off-campus because students experience the continuing effects of off-campus harassment in the educational setting (P. 18)

All sex/gender misconduct MUST be reported to the Title IX Officer and the institution must implement a system for tracking and reviewing all reports of sex/gender misconduct (p. 27)
Some Scenarios
**Sexual Misconduct Scenario**

- A student tells her faculty member that she was raped by a student athlete at an off campus party. She identified the perpetrator by name. The student demands that the faculty member not tell anyone. The faculty member does tell the coach who benches the student athlete for two games but does not give the female student's name.

- Have Title IX requirements been fulfilled?

- What should you do?
A student worker in your office shows you 45 text messages that her boyfriend sent her last night while she was at the library. He wanted to “make sure he knew where she was”. She said he has been waiting outside her dorm each morning and has started calling her friends asking about her.

Is this a Title IX matter?

As a faculty member what should you tell her?

What would be the appropriate next steps to take?
Sexual Misconduct Scenario

- You receive an e-mail from a male student complaining that a female faculty member in your department is making inappropriate flirtations comments in class. The student requests confidentiality because he is concerned about retaliation by the faculty member.

- Does this fall under Title IX?

- What would you tell the student?

- What should be the next steps?
Thank you!

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