



INSTITUTIONAL COMPLIANCE SOLUTIONS

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Institutional Compliance Solutions

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RECORDKEEPING UNDER TITLE IX

*What to Keep, How Long to
Keep It, and Why It Matters*

Intermediate



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COURSE APPROPRIATE FOR:

☒ Title IX Coordinators

☒ Title IX Team Members

☒ Deputy Title IX Coordinators

☒ Compliance Professionals



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**IF IT IS NOT
DOCUMENTED, IT
DID NOT HAPPEN.**



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Requirements

WHAT THE REGULATIONS ACTUALLY REQUIRE

RETENTION REQUIREMENT

"A recipient must maintain for a period of seven years records of—

- (i) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
- (ii) Any appeal and the result therefrom;
- (iii) Any informal resolution and the result therefrom; and
- (iv) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process."



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Requirements

WHAT THE REGULATIONS ACTUALLY REQUIRE

SUPPORTIVE MEASURES DOCUMENTATION REQUIREMENT

Also within § 106.45(b)(10):

"For each response required under paragraph (b)(1) of this section, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment."

And further:

"If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances."



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Requirements

WHAT THE REGULATIONS ACTUALLY REQUIRE

WITHIN THE SAME SUBSECTION:

"A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website, available upon request for inspection by members of the public."



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SCHOOLS MUST MAINTAIN RECORDS FOR 7 YEARS OF:

All materials used to train
Title IX personnel

1

Investigation files

2

Determination letters

3

Appeal records

4



5

Informal resolution documentation

6

Training materials

7

Records of supportive measures



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DON'T FORGET



State laws may require longer retention.



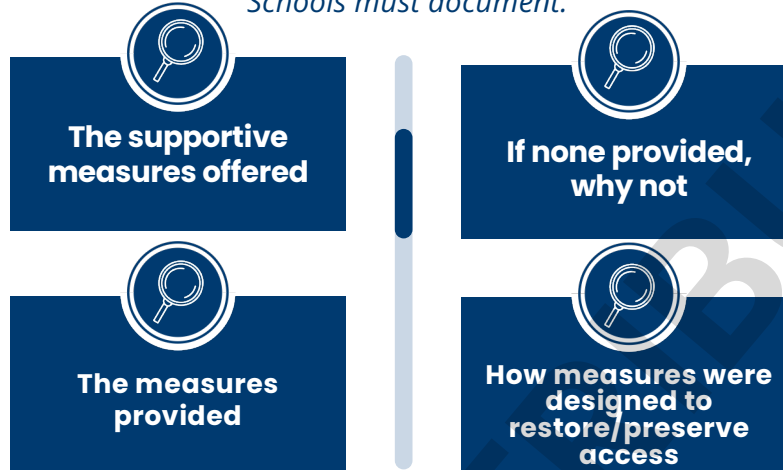
Litigation holds override the 7-year rule.



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CLOSER LOOK: DOCUMENTING SUPPORTIVE MEASURES

Schools must document:



Even if a complainant declines measures, document the offer.

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CLOSER LOOK: RESOLUTION RECORDS



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CLOSER LOOK: INFORMAL RESOLUTION DOCUMENTATION

Must document:



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CLOSER LOOK: TRAINING MATERIALS

Training Materials Must Be Public. Schools must:



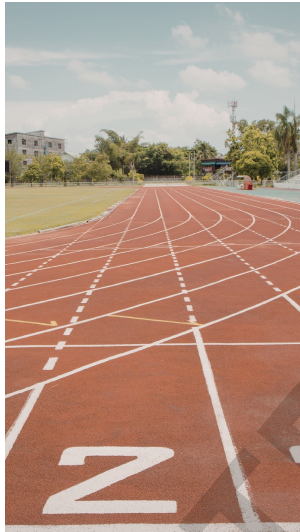
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WHAT ABOUT NON-SEXUAL HARASSMENT COMPLAINTS?

Title IX includes pregnancy discrimination, athletics, equity issues

Athletic equity reviews

Gender equity assessments



While 2020 regs focus on sexual harassment procedures, broader civil rights documentation still matters

Strongly encourage schools to document:

- Other complaints of sex discrimination and outcomes
- Pregnancy accommodation requests



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COMMON RECORDKEEPING MISTAKES

Where Schools Get in Trouble:

Not documenting supportive measure offers and revisit of those offers

Failing to retain and post training materials

Missing rationales in determinations

Inconsistent file naming systems

Overwriting digital files

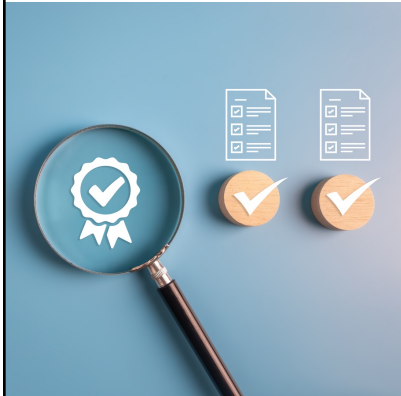
Storing documentation in personal email accounts



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BEST PRACTICES FOR DEFENSIBLE DOCUMENTATION

Suggestions for Building a Defensible Record

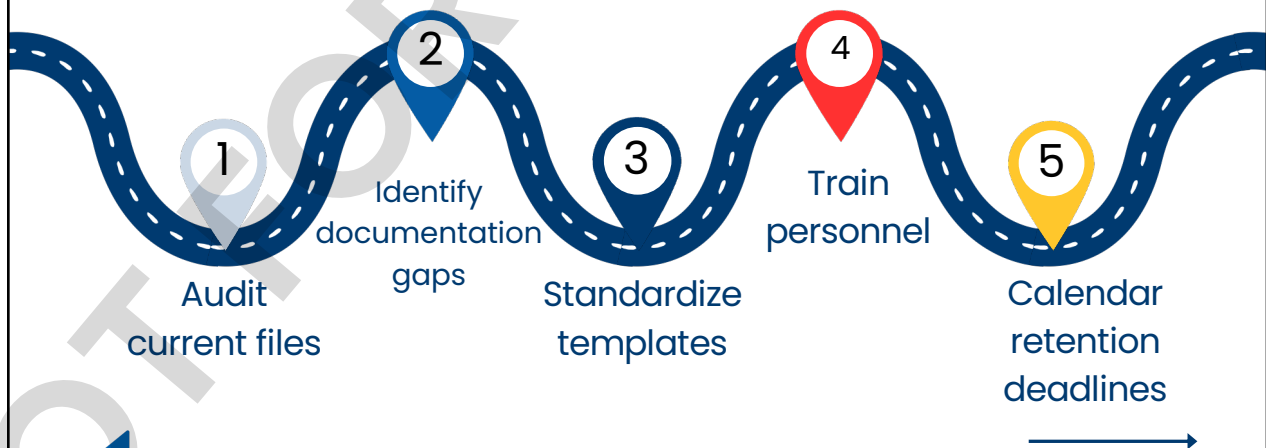


- Standardized templates
- Centralized secure storage
- Version control practices
- Document retention calendar
- Annual internal audit
- Litigation hold procedures



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5-STEP IMPLEMENTATION PLAN



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DOCUMENTATION PROTECTS EVERYONE



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QUESTIONS?



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CONGRATULATIONS!!



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