

JacksonLewis

# Reimagining Title IX Team Training:

Maximizing Institutional Resources and  
Improving Effectiveness, Compliance, Fairness,  
and Risk Mitigation

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# Roadmap

Sources of My Perspective

Competing Concerns / Inputs / Evaluators

High Stakes and Inherent Challenges

OCR Requirements, Commentary, and Perspective

Potential Approaches: Once a Year/Box-Checking v. Throughout the Year/Sustained Excellence

Suggested Next Steps

Q&A / Discussion

# Sources of My Perspective

Policy/procedure drafting + revision

Heavy industry involvement

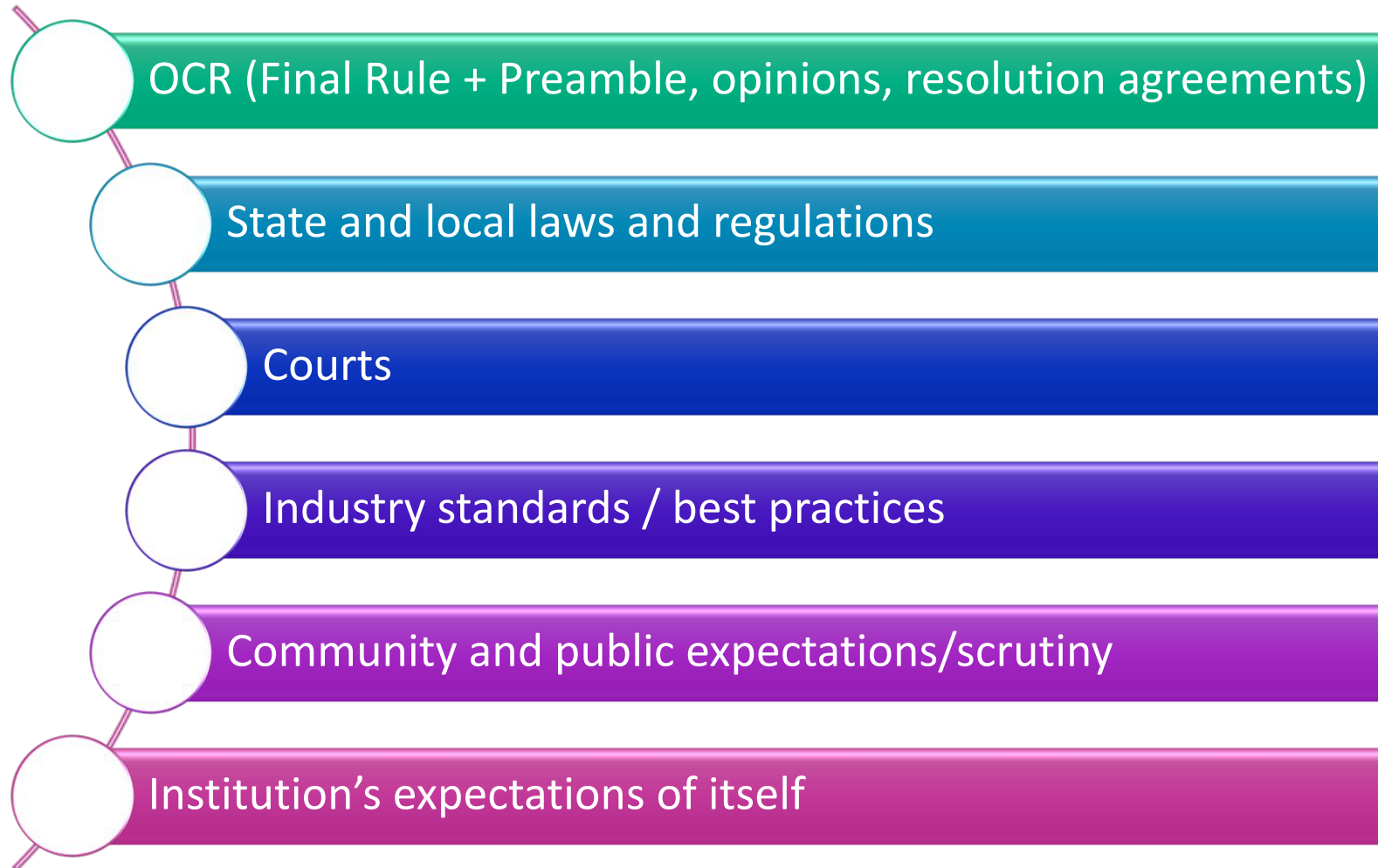
Real-time consultation

Investigations, hearings, appeals

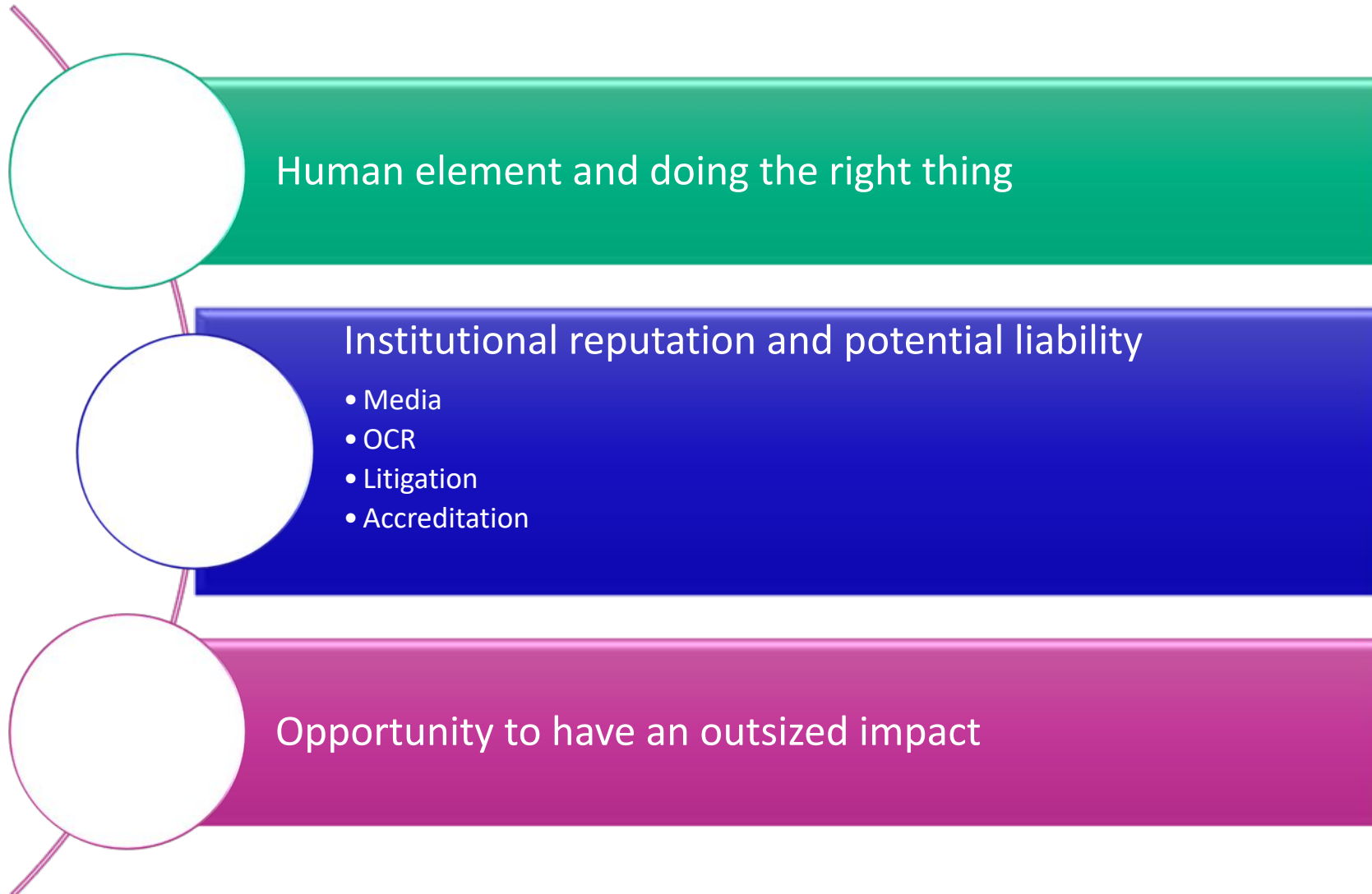
Title IX litigation / OCR investigations

Team trainings + deep reflection

# Competing Concerns/Inputs/Evaluators



# High Stakes



Human element and doing the right thing

Institutional reputation and potential liability

- Media
- OCR
- Litigation
- Accreditation

Opportunity to have an outsized impact

# Inherent Challenges

Team member availability and willingness

Limited/stretched resources

Leadership buy-in

Scheduling and logistics

Regulatory bouncing ball

# Inherent Challenges

Other complexity

Sensitive subject matter

Group think

Complacency

***“Between stimulus and response there is a space. In that space is our power to choose our response. In our response lies our growth and freedom.”***

**- Victor Frankl**

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***“The obstacle is the path.”***

**- Zen proverb**

# What to Do With This Space

- **Evaluate current annual Title IX team training approach and level up!**
- **Approach = structure + key elements + activities**
- **Four key questions**
  - Is our approach truly equipping team members for success in their often daunting and always critically important roles?
  - Is our approach truly maximizing institutional resources?
  - How would others evaluate our approach? (OCR, courts, students, employees, parents, community, public, ourselves)?
  - What can and will we do better?

# OCR-Enforced Requirements

- **Title IX Final Rule Training Requirements**

- “A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.” 34 CFR § 106.45(b)(1)(iii)
- “Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.” 34 CFR § 106.45(b)(1)(iii)
- “A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section.” 34 CFR § 106.45(b)(1)(iii)
- “A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section.” 34 CFR § 106.45(b)(1)(iii)
- “A recipient must maintain for a period of seven years records of –
  - (D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.” 34 CFR § 106.45(b)(10)(i)(D)
- Plus **661** mentions of “TRAIN” in the Preamble (see additional materials)

# (Clery Too)

- **Clery Training Requirements**

**34 C.F.R. § 668.46**

- **(b)** Annual security report. An institution must prepare an annual security report reflecting its current policies that contains, at a minimum, the following information:
  - **(11)** A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, as defined in paragraph (a) of this section, and of procedures that the institution will follow when one of these crimes is reported. 34 CFR § 668.46(b)(11)
- **(k)** Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking. As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as defined in paragraph (a) of this section, and that—
  - **(2)** Provides that the proceedings will—
    - **(ii)** Be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. 34 CFR § 668.46(k)(2)(ii)

- **Clery Act Handbook**

- The officials who are chosen to conduct proceedings to address allegations of dating violence, domestic violence, sexual assault and stalking **must receive training at least once a year**. Your statement must describe this training. It is important that this training be updated as necessary to address the latest issues and techniques for conducting proceedings on these topics from beginning to end. Training for these officials should address but not be limited to the following topics: relevant evidence and how it should be used during a proceeding; proper techniques for questioning witnesses; basic procedural rules for conducting a proceeding; and avoiding actual and perceived conflicts of interest.

# Other OCR Commentary

## OCR Opinion

Butte-Glenn Community College District (July 17, 2017)

- OCR investigation of Butte-Glenn Community College; Complainant alleging that College failed to respond promptly and equitably to notice that she had been subjected to sexual violence by another student. OCR found College's appeal process not reliable or equitable.
- OCR determined that College's training resulted in the College's Judicial Council members being unclear about the applicable legal standards for determining consent and the standard and scope of review.
- Notably, all members of College's Judicial Council expressed a lack of confidence in the training provided on consent or in his or her understanding of the consent standard, which was the focus of the deliberations.

# Other Inputs and Evaluators

## OCR Resolution Agreement

Butte-Glenn Community College District (July 12, 2017)

- “This annual [Title IX] training ... will include, at a minimum:
  - i. the College’s revised policies and grievance procedures for Title IX reports;
  - ii. the College’s responsibilities under Title IX to address allegations of sexual harassment and sexual violence, whether or not the actions are potentially criminal in nature;
  - iii. the neurobiology of trauma and possible impact on an individual’s participation in the grievance process;
  - iv. recognizing and responding to allegations and reports pursuant to Title IX, including conducting interviews of victims of sexual violence and communicating in an impartial and objective manner;
  - v. recognizing and appropriately responding to allegations of retaliation, intimidation, and coercion pursuant to Title IX;
  - vi. how to conduct and document equitable, adequate, prompt, reliable and impartial Title IX investigations, including the appropriate legal standards to apply in a Title IX investigation;
  - vii. protection of information regarding sexual harassment and sexual violence allegations so that only College employees with a need to know receive such information;
  - viii. the link between alcohol and drug use and sexual harassment and sexual violence, including how to address the challenges of investigating incidents involving alcohol or drug use; and
  - ix. a **written assessment** requiring participants to demonstrate that they have learned the material in the Title IX training.”
- “The College will ensure that any individuals participating in any body created by the College to hear appeals, including those involved with any level of appeal, shall receive training **annually and at least 30 days prior to reviewing any appeal** on sexual harassment and sexual violence.”

# Preamble Commentary on Training Approach

- [T]he **nature of the training** required under § 106.45(b)(1)(iii) is **left to the recipient's discretion** so long as it achieves the provision's directive that such training provide instruction on how to serve impartially and avoid prejudgment of the facts at issue, conflicts of interest, and bias, and that materials used in such training avoid sex stereotypes. (85 Fed. Reg. 30,084 (May 19, 2020)).
- [T]he **Department declines to recommend certain training practices or techniques** aside from the requirements of § 106.45(b)(1)(iii), **leaving flexibility to recipients** to determine how to meet training requirements in a manner that best fits the recipient's unique educational community. (85 Fed. Reg. 30,120).
- Thus, these final regulations require Title IX personnel to be well trained in how to conduct a grievance process; within the requirements stated in § 106.45(b)(1)(iii) recipients have **flexibility to adopt additional training requirements** concerning evidence collection or evaluation. (85 Fed. Reg. 30,247).
- Commenters correctly noted that the final regulations **do not impose an annual or other frequency condition** on the mandatory training required in § 106.45(b)(1)(iii). The Department interprets this provision as requiring that any Title IX Coordinator, investigator, decision-maker, or person who facilitates an informal resolution process **will, when serving in such a role, be trained to serve in that role**. (85 Fed. Reg. 30,253-54).

# Preamble Commentary on Training Approach

- For the reasons explained above, the Department has determined that § 106.45(b)(1)(iii) in the final regulations strikes the appropriate balance between mandating training topics the Department believe are necessary to promote a recipient's compliance with these final regulations **while leaving as much flexibility as possible to recipients** to choose the content and substance of training topics in addition to the topics mandated by this provision. (85 Fed. Reg. 30,255).
- The Department declines to require that Title IX personnel be “mentored” before working with parties, or to create an aspirational list of training components. The Department's intent with respect to this provision is to **provide flexibility for each recipient to design or select training components that best serve the recipient's unique needs and educational environment**, while prescribing those training topics necessary for a recipient to comply with these final regulations. (85 Fed. Reg. 30,255).
- For similar reasons, the **Department declines to prescribe whether training presenters must possess certain qualifications** and will enforce § 106.45(b)(1)(iii) based on whether a recipient trains Title IX personnel in conformity with this provision rather than on the qualifications or expertise of the trainers. . . Whether or not a recipient has complied with § 106.45(b)(1)(iii) is not determined by the source of the training materials or training presentations utilized by a recipient. (85 Fed. Reg. 30,257).
- Under these final regulations, recipients have **discretion to include trauma-informed approaches** in the training provided to Title IX Coordinators, investigators, decision-makers, and persons who facilitate informal resolutions so long as the training complies with the requirements of § 106.45(b)(1)(iii) and other requirements in § 106.45, and nothing in the final regulations impedes a recipient's ability to disseminate educational information about trauma to students and employees. (85 Fed. Reg. 30,323).

# Preamble Commentary on Training Approach

- Further, as noted above, **nothing in the final regulations precludes a recipient from including in that training information about the impact of trauma on victims or other aspects of sexual violence dynamics**, so long as any such training promotes impartiality and avoidance of prejudgment of the facts at issue, bias, conflicts of interest, and sex stereotypes. (85 Fed. Reg. 30,325).
- [A]nd the training required under § 106.45(b)(1)(iii) **allows recipients flexibility to include substantive training about how to assign weight or credibility to certain types or categories of evidence**, so long as any such training promotes impartiality and treats complainants and respondents equally. (85 Fed. Reg. 30,337).
- These final regulations **do not prevent a postsecondary institution from engaging in ongoing or year-round training** (of employees, or students) (85 Fed. Reg. 30,455).
- Furthermore, the final regulations **do not require training to be conducted in-person such that travel to and from training sessions is required; the final regulations also do not preclude training of Title IX Coordinators to be conducted online or virtually**. (85 Fed. Reg. 30,560).

# OCR Investigator Hat

- **How this comes up/where it fits in the investigation process**
- **Significant chance to make early mark and create deference**
- **OCR investigators are (busy) people too**
- **Evaluation of two potential approaches: once a year/box-checking vs. throughout the year/sustained excellence**

# Once a Year/Box-Checking Approach

Sending coordinator and other team members out for/bringing someone in for live training by an external person/entity – typically once a year, and most often for one role each.

- Most common
- Does have significant benefits
- But...is it really the best/most effective/most cost-effective approach (especially as stand alone or even central element)??

# What to Do With This Space

- **Evaluate current annual Title IX team training approach and level up!**
- **Approach = structure + key elements + activities**
- **Four key questions**
  - Is our approach truly equipping team members for success in their often daunting and always critically important roles?
    - Time lag issues + limited ability to re-train and spot train
    - Lack of processing/internalization
    - Heightened risk of imputation of bias to team members
  - Is our approach truly maximizing institutional resources?
    - My opinion: single role training only misses the mark
  - How would others evaluate our approach? (OCR, courts, students, employees, parents, community, public, ourselves)?
  - What can and will we do better?

# Throughout the Year/Sustained Excellence Approach

- Combination of training from internal AND external sources
  - Internal - from coordinator or team members
  - External – attorney/other industry experts
- Combination of live AND recorded training
  - Personal touch
  - Scheduling/logistics
  - Cross-training, re-training, spot-training, onboarding, enhanced processing/internalization, etc.
- Experiential and assessment components
  - Knowing training content and being able to exercise a new skill are **not** the same
  - People need repeated opportunities to practice new skills and improve their abilities
  - Best approach to deliberate practice is detailed coaching, actual practice/rehearsal/role play, and feedback

Joseph Grenny, et al., *Influencer: The New Science of Leading Change* (2d ed. 2013).
- External AND internal cross-training! ((1) multiple roles + (2) trainees become trainers)

# The Importance of Cross-Training

- **What is cross-training?**

*“A strategy in which each team member is trained on the tasks, duties, and responsibilities of his or her fellow team members with the goal of providing team members with a clear understanding of how the entire team functions and how their particular tasks and responsibilities relate to those of other team members.”*

- “Volpe et al. (2005) demonstrated that task-related cross-training was effective in improving teamwork, team task outcomes, and aspects of communication behavior.”

The Impact of Cross-Training and Workload on Team Functioning: A Replication and Extension of Initial Findings, Janis A. Cannon-Bowers, et al., Penn State University (May 10, 2016)

- “Cross training, as it relates to a person’s business savvy, has its roots in education. We see it in every school curriculum from grade school to graduate school. We study a variety of courses, always trying to understand the whole equation rather than just its parts.”

The Essentials of Cross Training: The Benefits Of Delegation and The Role of Education, John Buzza, et al., *Journal of Business Case Studies – Third Quarter 2007* Vol. 3 No. 3.

# The Importance of Cross-Training

## Having a workforce of T-shaped individuals will give your organization:

- **Durability.** When only one person knows how to handle a key area of your business, your company isn't positioned for sustainability. Cross-training helps ensure that if an essential team member quits or takes a vacation, your business won't suffer.
- **Agility.** Cross-training creates a more agile workforce by providing on-the-job professional development. It's a win-win because you get to duplicate your employees' skill sets, and your employees get a chance to learn different things, uncover hidden talents, and prepare to advance in the organization.
- **Flexibility.** Organizations that cross-train are better equipped to recover quickly from disruptions and handle transitions gracefully. This means they can deliver seamless service to their customers, even in times of disruption.
- **Efficiency.** Cross-training forces teams to refine processes by making them take a hard look at the way they do things as they train others. Teaching is also a great opportunity for learning because it forces employees to answer questions, explain their processes, and see the tasks they perform daily through a fresh set of eyes.
- **Teamwork.** Cross-training gives employees a chance to build new relationships with people they might otherwise never have contact with. These relationships will help your team work more effectively and increase employees' understanding of the big picture.

<https://www.forbes.com/sites/chriscancialosi/2014/09/15/cross-training-your-best-defense-against-indispensable-employees/?sh=3b3ecb217d90>

# Throughout the Year/Sustained Excellence Approach (Elements/Advantages)

- Team meetings at regular intervals
  - After action assessments
  - Recorded module review
  - Running list of topics
  - Tabletop exercises
  - Trainees become trainers
- Systematic spot-training before live matter engagement!
  - May be relatively brief
  - Potentially require or invite recorded module or other material review
- Expert presentations on key topics (e.g., fundamental skills, restorative justice, trauma impacts, bias issues, self care, human impact, unique institution issues, case law updates) (conferences / group offerings; especially free ones; careful vetting)
- Systematic collection and distribution of industry content (especially free ones; careful vetting)

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  - How would others evaluate our approach? (OCR (revisit investigator hat), courts, students, employees, parents, community, public, ourselves)?
  - What can and will we do better?

# Suggested Next Steps

- **Careful evaluation of current approach, taking into account unique institutional characteristics and culture**
  - Carefully selected team of stakeholders
  - Perform at regular intervals
  - Be sure to highlight when describing annual Title IX team training approach
- **Level up by implementing changes**

# Questions?

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Thank **you.**