

The Intersection of Title IX and Disability Law: *Connecting the Dots*

Emily Babb, Northwestern University

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ATIXA Annual Conference

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Land and Life Acknowledgment

- For centuries, the land now known as Philadelphia was home to and cared for by native peoples. These include the Lenni-Lenape People of Lenapehoking and the Poutaxat (Delaware Bay). We recognize these Tribes' strength and history of resistance to colonization.
- We commit to honoring their history, presence, and future. We support local Native people, including the Nanticoke Lenni-Lenape Tribal Nation, the Ramapough Lenape Nation, the Powhatan Renape Nation, the Nanticoke of Millsboro Delaware, the Lenape of Cheswold Delaware, and others.

City of Philadelphia land and life acknowledgment:
<https://www.phila.gov/programs/farmphilly/land-and-life-acknowledgment/>

Meet the Presenters

Emily Babb (she/her)

Associate Vice President for Civil Rights and Title IX
Compliance

Northwestern University

Catherine Spear (she/her)

Vice President of Equity, Equal Opportunity, and Title IX

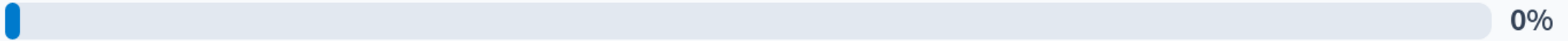
University of Southern California

Today's Road Map

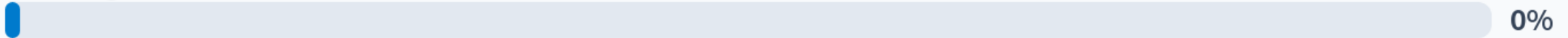
- Overview of Title IX and Section 504/ADA
- Role of Title IX and Section 504/ADA Coordinators
- Accommodations and supportive measures
- Pregnant and Parenting Students
- Connecting the dots between Title IX offices and disability services offices
- Q&A

Who is in the audience?

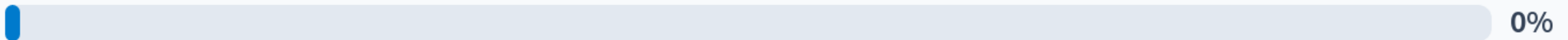
Title IX Coordinator



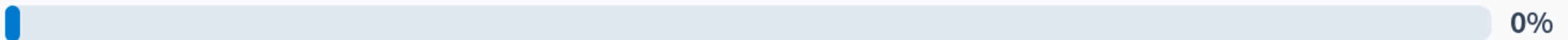
Investigator



General Counsel



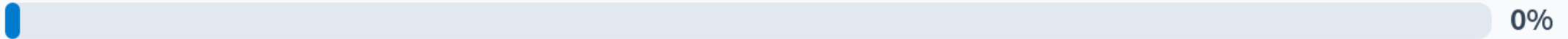
Human Resources Staff



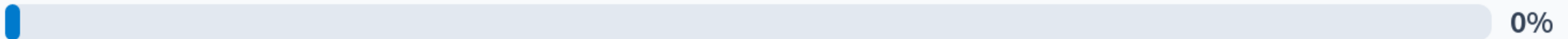
504 or ADA Coordinator or Disability Services



External Investigator or Attorney

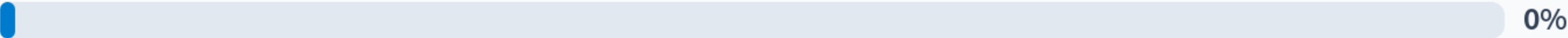


Other

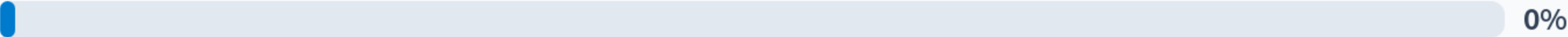


Tell us about your institution

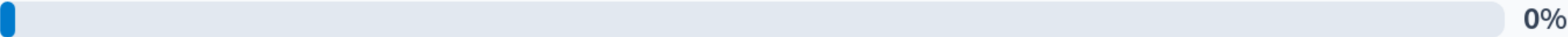
Public or Private University or College



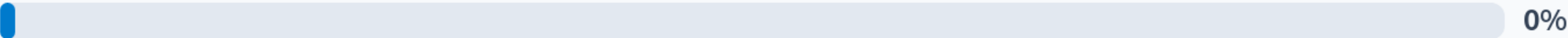
K-12 school or district



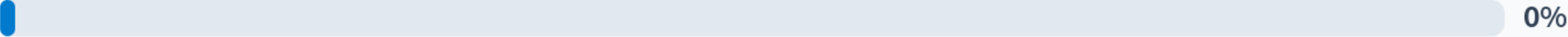
Advocacy organization



External Firm (investigation or legal)



Other



Applicable Law and Policy

- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Amendments Act (2008)
- State and local disability laws and ordinances
- AND:
 - Other federal and state civil rights laws regarding race, national origin, sex, pregnancy, etc.
 - Your institution's mission/vision/values, often rooted in DEI, belonging, and/or justice principles!

Title IX

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 education program or activity receiving federal financial assistance.

Section 504

No otherwise [qualified individual with a disability] in the United States...shall, solely by reason of [their disability] be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Pregnant Workers Fairness Act

NPRM (proposed rule)
published August 11,
2023 (comments
through 10/10/23)

Requires reasonable
accommodations for
known limitations

Related to pregnancy,
childbirth or related
condition

UNLESS causes undue
hardship

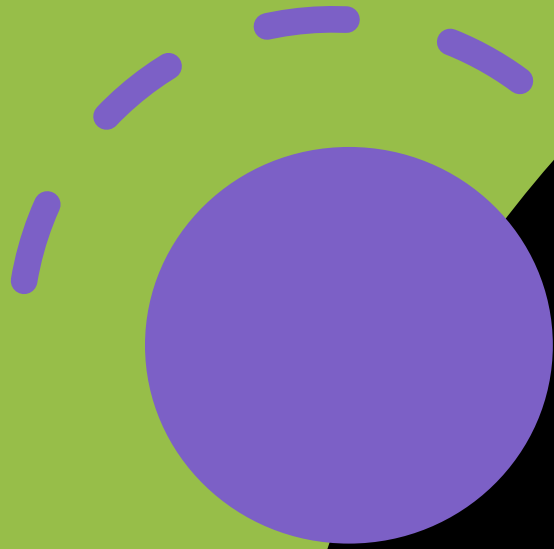
Only applies to
accommodations

KEY: May require
temporary suspension
of essential
job functions

Effective date: June 27,
2023

Disability Law Landscape

- May 6, 2022, Department of Education announced intent to amend the regulations implementing Section 504
 - Solicited public comments very broadly – simply asked for written comments on how best to improve the current regulations
 - A number of groups have submitted comments to ED
 - Next steps will be publishing proposed rules for comment in the Federal Register (TBD...not August 2023 as promised)



Title IX and Section 504/ADA Coordinator Roles

Title IX Coordinator

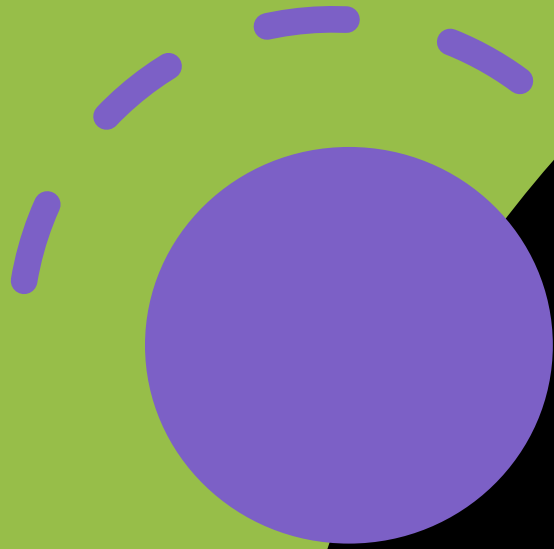
- Every recipient (e.g., K-12, College, University) **MUST**
 - Designate **AT LEAST ONE** employee to coordinate its responsibilities under Title IX
 - **NOTIFY** applicants for admission and employment, students, parents, employees, and unions/professional organizations of the Title IX Coordinator's contact information (name or title, office address, email address, and telephone number)
 - **PROMINENTLY DISPLAY** the contact information for the Title IX Coordinator and its Title IX Policy on its website, if any, and in each handbook or catalog
 - **ENSURE** Title IX Coordinators, investigators, decision-makers and informal resolution facilitators are trained on the definition of sexual harassment, the scope of the education program and activity, how to conduct an investigation and grievance process, and how to serve impartially.

Disability (504/ADA) Coordinator

- Every recipient (e.g. K-12, College, University) that employs 15 or more persons **MUST**
 - Designate **AT LEAST ONE** person to coordinate its efforts to comply with Section 504
 - Include identification of the 504 Coordinator in its notices
 - Adopt and publish grievance procedures
- See 34 C.F.R. § § 104.7, 104.8
- A public entity that employs 50 or more persons **MUST**
 - Designate **AT LEAST ONE** employee to coordinate its efforts to comply with ADA
 - Make available the name, office address, and telephone number of the designated employee
 - Adopt and publish a complaint procedure
- 28 C.F.R. § 35.107

What does a Coordinator *actually* do?

- May depend on the population served – different coordinator for employees v. students
- Manage the recipient's compliance program
- Implement accommodations or supportive measures
- Implement the grievance procedure, complaint process, etc.
- Provide expertise on the relevant law to other offices
- Education/training
- Collaborate with various stakeholders



Accommodations and Supportive Measures

Academic Adjustments and Auxiliary Aids and Services (Students)

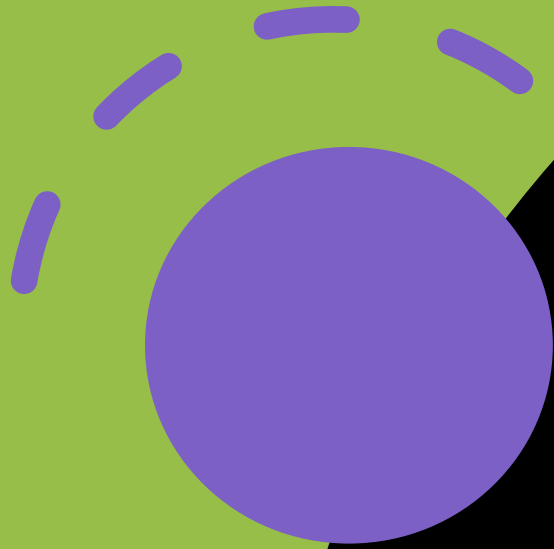
- Based on disability and individual needs
- Designed to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment
- Modifications as necessary to ensure equal educational opportunity
- Not required to lower or waive essential academic requirements or fundamentally alter or cause undue financial/admin burden
- School can request medical/health documentation of disability and functional limitations
- School cannot require student to pay for approved accommodation

Title IX Supportive Measures: Current Guidance

- Available to Complainants and Respondents
- Designed to restore or preserve equal access to education/employment, protect student and employee safety, or deter sexual harassment
- At no cost and as reasonably available
- Do not require a Formal Complaint
- Like student disability accommodations, if they fundamentally alter a program or lower academic standards, they are not *reasonably available* and need to consider alternatives—**BUT...**
- The documentation requirements are not as prescriptive as they may be for a student or employee with a disability

Title IX Supportive Measures: Set the Stage for Success

- Title IX and Section 504/ADA Coordinators (and their designees) must effectively coordinate and regularly communicate
- Develop, prominently publish, and consistently implement clear processes for requesting disability accommodations and/or “Title IX accommodations”/supportive measures
- Educate community members (faculty/staff/students) on the differences between the processes—and the roles of the Title IX and 504/ADA Coordinators
- Develop a feedback loop through advocacy/ally committees, online feedback forms, surveys, etc.
- Periodically update processes as necessary and appropriate



"I am a pregnant student. Where do I go for help?"


Disability Services


- Register as a student with a disability
- Engage in the interactive process
- Auxiliary aids and academic adjustments (i.e., “reasonable accommodations”) in the classroom
- Modifications to policies and procedures
- Accommodations for extracurricular activities (e.g., debate club, athletics)
- Pregnancy (or other temporary disability) accommodations
- Informal *voluntary* process for review of approved accommodations

Title IX/Equity Office

- Supportive measures (e.g., extension of time, connection to counseling, etc.) with or without filing a Formal Complaint
- Pregnancy (and related conditions) and parenting accommodations
- Report concerns/file a Formal Complaint about failure to accommodate or other discrimination/harassment/retaliation related to a protected characteristic (e.g., sex, disability, etc.)
- Learn about your rights

Website Example

 Office for Equity, Equal Opportunity, and Title IX

[Get Help](#) [Policy and Reporting Options](#) [Training and Other Resources](#) [Employment Equity](#) [About Us](#) [What Are My Choices?](#) 

Student Supportive Measures

All About Student Supportive Measures

1. What are supportive measures?

Supportive measures are non-disciplinary, non-punitive, individualized support services available to students who believe they may have currently (or in the past) experienced discrimination, harassment, or retaliation related to one or more protected characteristics, such as race, gender, disability, etc.

2. What is their purpose?

They are designed to address a student's safety and well-being as well as to ensure that, despite what students may be experiencing, their continued access to University programs and activities is preserved or restored.

[EEO-TIX Partnership with Keck Medicine of USC](#)

[What Are My Choices?](#)

[Student Supportive Measures](#)

[Confidential and Private Resources](#)

Accommodations: Grievance Process

- Address accommodations in Policy and Procedures
- Coordinate with ADA Coordinator/Disability Services Office as Resources
 - Provide notice of process for requesting accommodations
- Collaborate with ADA Coordinator./Disability Services Office to confirm disability and identify appropriate accommodations
- Consider utilizing universal design and accessibility principles in your investigation and hearing process
 - Ex. plain language, multiple modalities of communication, physically accessible buildings, captioned meetings, accessible websites and materials

Best Practices: Title IX Resolution Process

Title IX Coordinator

- Check with Disability Services as to whether parties are registered as students with disabilities (do not include party role or details)
- Include in Notices of Investigation/Hearing, etc. a statement advising parties to request reasonable accommodations for a disability, as needed

TIX & Disability Services

- Both parties request disability-related accommodations
- Title IX and Disability Services consult to identify appropriate accommodations

Possible outcomes

- Written questions in advance
- Time to process before answering questions
- Presence of an emotional support animal
- **IMPORTANT NOTE:** do not have to be registered with Disability Services to receive accommodations

Common Accommodations: Title IX Resolution Process

- Notetaker
- Written questions
- Frequent breaks
- Additional support person
- Captioning
- Interpreter
- Written copies of reports, letters, evidence, etc.
- Emotional Support Animal

Sample Notice Language

.....

Procedure for requestion reasonable accommodations

If you are an individual with a disability and need a reasonable accommodation in order to fully and effectively participate in the University's resolution process, please notify me as soon as possible. I will work with the [Disability Services Office/ADA Coordinator] to ensure reasonable accommodations are provided. While such requests may be made at any point during the process, individuals are strongly encouraged to make their request known at the earliest possible time and, if possible, five business days in advance of an anticipated activity where the accommodation is needed (such as an interview or hearing).

Questions and Discussion

What examples do you have for what is working well or what could be improved regarding partnerships between Title IX offices and Disability services in investigations?

Pregnancy and Parenting
Accommodations
Under the *Current* Title IX
Requirements



U.S. Department of Education

Office for Civil Rights

October 2022

Discrimination Based on Pregnancy and Related Conditions

A Resource for Students and Schools

What does a Coordinator *actually* do?

- June 2013 *Dear Colleague Letter* and Pamphlet on *Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972*
- October 2022 Fact Sheet: *Discrimination based on Pregnancy and Related Conditions*
 - Discrimination and exclusion
 - Medical and other benefits and services
 - Leave policy

**More to come with proposed changes to the Title IX and/or
Section 504 Regulations???**

Pregnancy Accommodations

- Excused absences/leave
- Extended time
- Frequent breaks
- Remote participation
- Change in seating assignments
- Cannot subject to discrimination or harassment based on sex—which includes:
 - Pregnancy
 - Childbirth
 - False pregnancy
 - Termination from pregnancy or
 - Recovery therefrom

2022 OCR Decision: Salt Lake CC

OCR investigated whether:

- Professor encouraged a student to drop a course because she was pregnant and told student that she needed to “accept responsibility for her pregnancy;”
- Title IX Coordinator promptly and equitably responded to a report of the Professor’s conduct;
- College engaged in an interactive process with the student to provide her with accommodations during her pregnancy in the same manner that the College provides to students with temporary medical conditions; and
- College excused the student’s pregnancy-related absences and allowed her to submit work after pregnancy-related absences.

Source: OCR Case No. 08-22-2021

2022 OCR Decision: Salt Lake CC

OCR's Factual Findings:

- Student was enrolled in a program with an attendance policy that did not allow lateness (or tardiness) in more than 20% of classes for each course.
- Student experienced nausea throughout the day and requested modification of policy and deadlines for assignments
 - Professor: “health is more important than a class”
- Student contacted Disability Resource Center
 - DRC: “pregnancy falls under Title IX”
- Student contacted Title IX Coordinator about request for adjustment and professor's comments
 - Title IX Coordinator: adjustments possible “with limits” but request constituted a fundamental alteration; alternatives not provided to student

2022 OCR Decision: Salt Lake CC

OCR's investigated whether:

- College failed to **respond promptly and equitable** to the student's complaint of pregnancy discrimination, in violation of Title IX.
- College failed to **engage in an interactive process** with the student to **determine the appropriate special services and/or academic adjustments** to provide in light of her pregnancy, in violation of Title IX.
- College failed to engage in an interactive process with the student and failed to **consider whether** the student's pregnancy caused a **temporary disability requiring academic adjustments**, in violation of Section 504.
- College failed to **excuse the student's absences** related to pregnancy, **provide her the opportunity to make up work** missed due to absences related to pregnancy **or provide alternatives** to making up missed work at a later date, in violation of Title IX

Salt Lake CC: OCR Resolution Agreement

- **Policies and Procedures**
 - Notice of Non-Discrimination (revise to include pregnancy and related conditions, parental/familial/marital status)
 - Grievance Procedures (revise to include information about opportunity to file pregnancy discrimination grievance)
- **Title IX and Disability Resource Center webpages**
 - Information about rights of pregnant and parenting students
 - Information about process for requesting accommodations/adjustments and addressing denials of requests
 - Information about fundamental alteration process
- **Training** for faculty member, Title IX staff, and Disability Resource Center staff
- **Individual Remedies**

Troy University: 2023 OCR Resolution Agreement (OCR Case No. 04-21-2060)

- **Policies and Procedures**

- Review, revise, and implement to make clear how request pregnancy accommodations

- **Website Updates**

- The University will publish prominently on its website and elsewhere, as appropriate, information regarding: (i) the Title IX rights of—and the University's obligations to—pregnant students; (ii) the procedure for pregnant students to request adjustments to the regular program; (iii) the name and contact information for the individual(s) tasked with coordinating the University's response to requests for adjustments from pregnant students; (iv) if different from (iii) above, the name and contact information for the University's Title IX Coordinator; and (v) the grievance procedure for students to file complaints of sex discrimination

- **Training Regarding Rights of/Obligations to Pregnant Students**

- Including survey of faculty/staff knowledge, post-training

- **Tracking System for Pregnancy Accommodation Requests**

- **Individual Remedies**

Pregnancy Related Conditions: Lactation

- Lactation is a pregnancy-related condition that must be accommodated
- Best practice = Implement a Pregnancy Accommodations Policy
- Under proposed Title IX rule, must provide lactation spaces that are:
 - clean
 - shielded from view
 - free from intrusion from others
 - may be used by a student for expressing milk or breastfeeding as needed

- *Where to start if you don't have a policy?*

**Stanford's Pregnancy, Childbirth, Adoption, and Lactation
Policy 5.9.1**



Connecting The Dots Through Collaboration

Opportunities for Collaboration

- **Reality** = overlap between disability related accommodations for temporary disability and pregnancy accommodations
- **Solution** = close coordination between Title IX coordinator and HR (for employees) and disability services (for students)
- NPRM proposes specific steps the Title IX Coordinator must take regarding pregnancy accommodations:
 - Notifications
 - Resources
 - Processes

ADA Coordinator and Title IX process

- Intentional collaboration
- Education and Training for Title IX staff
- Ensure ADA Coordinator/Disability Services Office staff are knowledgeable in Title IX processes
- Title IX and disability services office collaboration outside of investigations
 - Ex. Global Accessibility Awareness Day, tabling events, student group meetings, joint education workshops

Title IX and Disability Services Offices

- Regular check-ins between Title IX office and Disability Services Offices
- Plan joint projects/initiatives
- Develop protocols for sharing information
- Identify shared areas of concern/opportunity
- Shared events
- Policy review/input

Questions and Discussion

What examples do you have for what is working well or what could be improved regarding partnerships between Title IX offices and Disability services?



Thank You!

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Schools and Colleges are Facing Growing Title IX Case Management Needs

- What is Title IX Case Management?
 - Having a key administrator who is responsible for shepherding a complaint from post-intake through to completion
 - For many schools, Title IX involves hand-offs, from intake coordinator to TIXC to investigators to hearing officers to appeal officers. That can be disjointed and confusing to parties
 - A case manager can be the one consistent actor who is ensuring that all moving parts are well-oiled, collaborative, and efficient

Where Is the Case Management Trend Coming From?

- For some schools, they are using interim administrators, and bringing on a case manager still allows a campus/school professional to hold the TIXC title, as required by OCR
 - The case manager is playing the TIXC role in most everything but name
- For other schools, they need to deepen their bench to keep cases moving through the system. Tasking a deputy or team member(s) with case management responsibility helps with stressful case loads. Some schools assign deputies, so that one manages each case, rather than having a dedicated case manager
 - Many schools are still trying to understand what their post-regs complaint baseline actually is, to anticipate complaint volume and staffing needs, accordingly

How Can We Justify Case Management Positions/Roles?

- Too many Title IX offices have accepted 6/9/12+ month resolution timelines. This isn't sustainable, OCR will crack down, and the courts still require promptness
- We suggest that you use your own case pace to convince your administration that case management will help to reduce backlogs, speed resolutions, and increase team efficiency
- Failing to be prompt can be a denial of remedy, evidence of deliberate indifference, or negligence.
- The slowness of your office's case processing may not be your fault, but it is a risk exposure for your employer

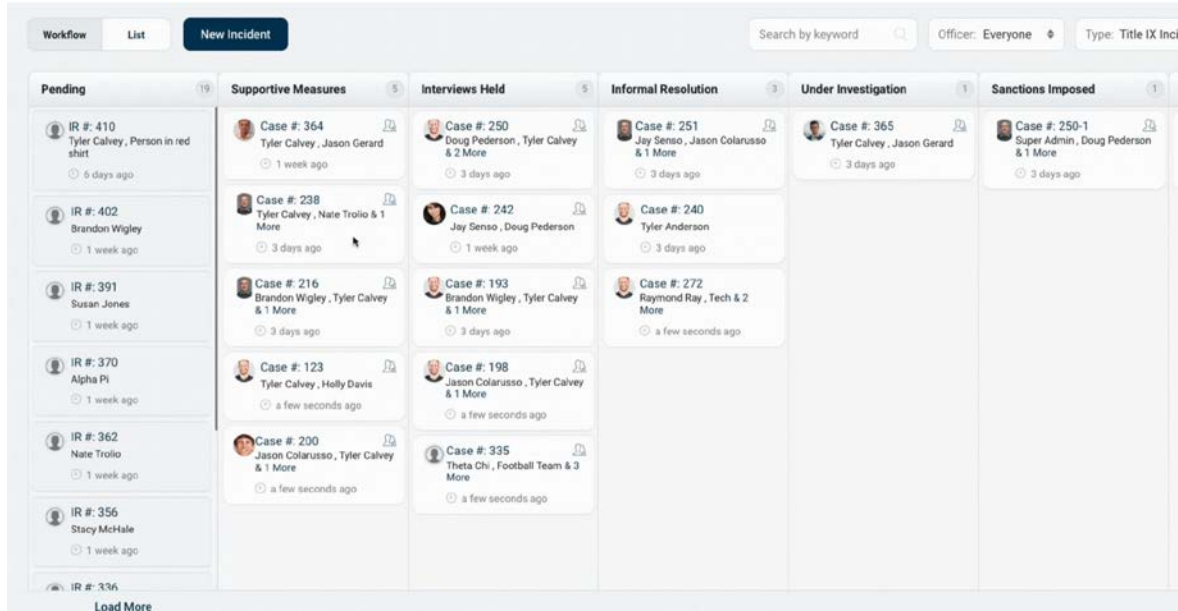
Education's Most Robust Incident Reporting & Case Management Software

- Guardian is an easy-to-use case management software with virtually unlimited adaptability.
- Guardian was designed as a case management system, not a records repository.
- Unlike database software, Guardian can be configured to your organization's unique needs, preferences, and processes.



Key Features

- Digital & Mobile Incident Reporting
- Configurable Workflows
- Intelligent Routing & Assignment
- Secure access controls
- Accurate record keeping for each individual report/case
- Automatic Outcome report generation
- Advanced reporting and metrics
- Integration with SIS and other school systems



Guardian is often used to support intake and manage cases of:

- Title IX
- Behavioral Intervention
- ADA/504
- Academic Integrity
- Campus Safety
- Student Conduct
- Employee Relations
- Threat Assessment
- Clery Compliance
- Counseling



Institutions & Districts realize the many benefits of Guardian

- Unlimited Adaptability – one system servicing multiple departments/functions
- Increased Efficiency – minimize mouse clicks and accomplish more in less time
- Easier Compliance – workflows remain in line with regulation & business practices
- Realtime data – metrics and reports at users' fingertips
- End to end process management – Guardian manages all aspects of your case, start to finish
- Email Tracking – All emails and email replies are automatically tracked on each case



Used by hundreds of Schools of all shapes & sizes

