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Anticipated Biden Administration Title IX Changes + Revisiting Title IX Team Training to Maximize Resources and Improve Effectiveness

Josh Whitlock

NC Community College System • Title IX Webinar

March 17, 2021

Josh.Whitlock@jacksonlewis.com • (980) 465-7237

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Roadmap

Anticipated Title IX changes under the new administration

Heightened importance of annual Title IX team training

Annual Title IX team training: Tips for maximizing resources and improving effectiveness

Quick overview of video training series approach/option

Q&A (time permitting)

Anticipated Changes

- **Two things for sure:**
 - Drastic change on the way
 - Full replacement most likely 1-2+ years away
- **Polarized approaches + previous Biden involvement + clear signaling (including executive order issued on March 8, 2021)**
- **Notice and comment + other interim options**
 - Guidance document
 - Legislative

Anticipated Changes

- **Predictions:**

- Significant guidance document by end of summer
- Significant shift in enforcement approach

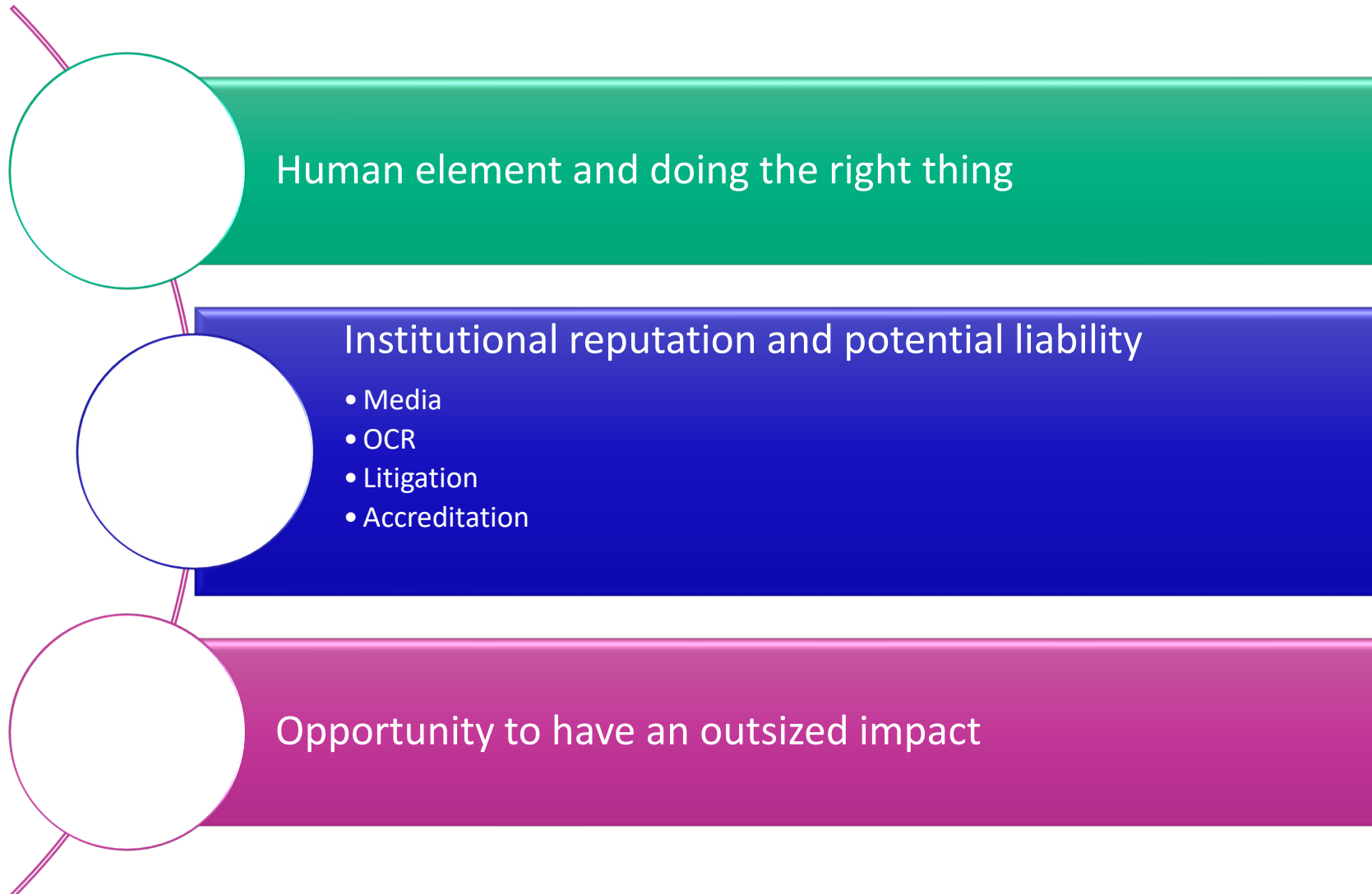
- **Likely impact:**

- Chipping away (especially at features perceived to be hostile to complainants)
- Further muddying of waters + potential conflict with courts

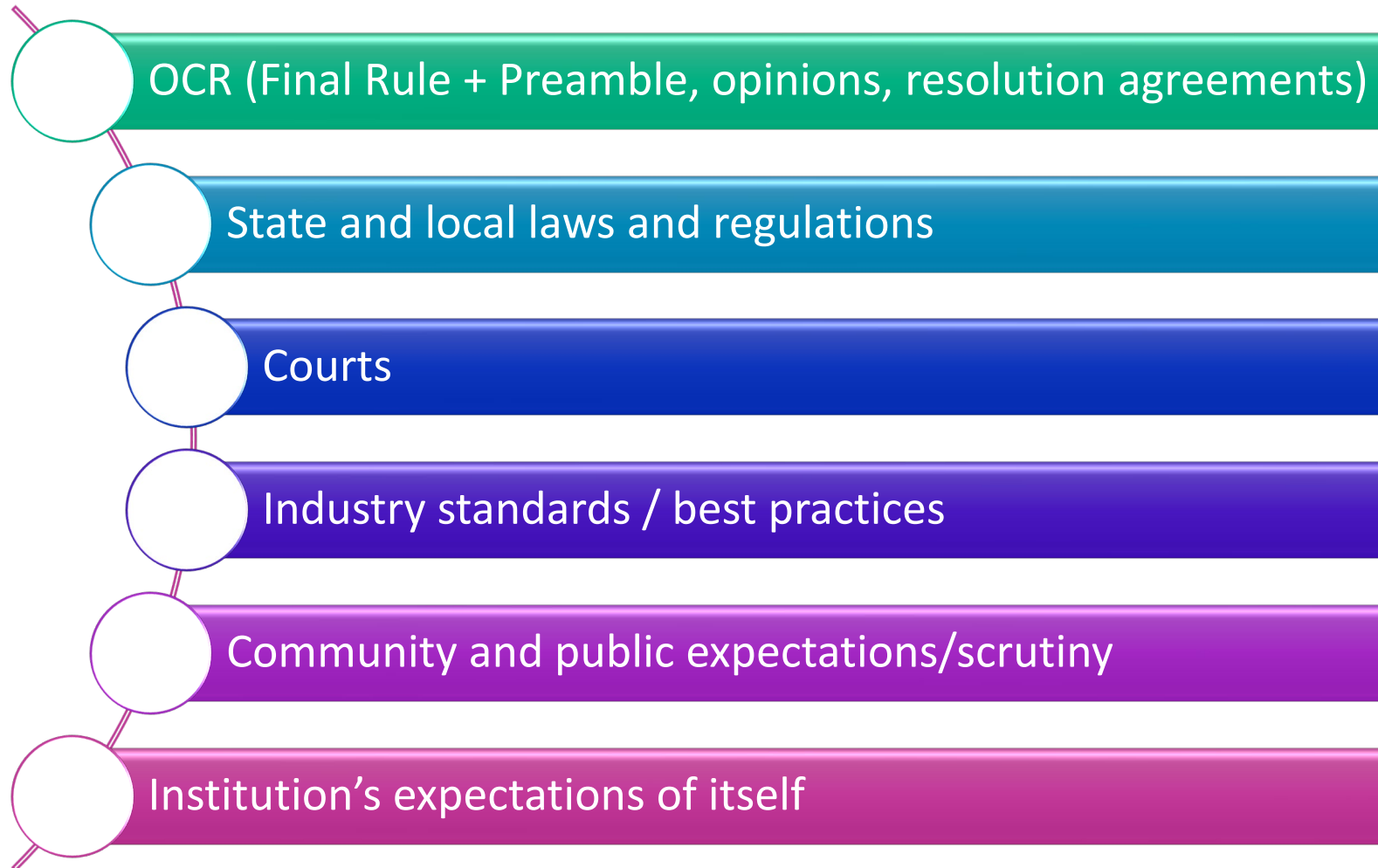
- **To do in meantime:**

- Continue to apply current regulations
- Prepare for over-the-summer tweaks
- Heavy emphasis on team training effectiveness

Annual Team Training: High Stakes



Annual Team Training: Competing Concerns/Inputs/Evaluators



Annual Team Training: Inherent Challenges

Team member availability and willingness

Limited/stretched resources

Leadership buy-in

Scheduling and logistics

Regulatory bouncing ball

Annual Team Training 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

“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 Baseline 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)

(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.

OCR Commentary on Training Approach/Flexibility

- [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).

OCR Commentary on Training Approach/Flexibility

- 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).

OCR Commentary on Training Approach/Flexibility

- 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).

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...not specifically required + 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 and is not cost-effective
 - Strongly suggest swiss army knife approach
 - 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 with recorded element at the center**
 - Personal touch
 - Scheduling/logistics
 - Versatility
 - Cost-effectiveness
 - 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)**

HIGHER EDUCATION



Title IX Video Training Series

Jackson Lewis Offers Recorded Modules to Meet Annual Title IX Team Training Obligations and Address Best Practices in Investigating and Adjudicating Sexual Misconduct Allegations.

Providing effective Title IX training can be challenging, but it is essential to ensuring both compliance and campus safety. Your annual training must address complex and shifting legal requirements and equip team members to navigate sensitive situations with skill and care. Given the contentious legal environment and the requirement that training materials be posted publicly, careful preparation and vetting have never been more important. At the same time, the logistical and financial constraints faced by schools have never been greater.

These circumstances require a comprehensive, cost-effective, and versatile training solution. Jackson Lewis has you covered.

Please contact Josh Whitlock to order or with questions.



Josh Whitlock

Principal

Charlotte
980-465-7242
Josh.Whitlock@jacksonlewis.com



Sarah Ford Neorr

Of Counsel

Charlotte
980-465-7237
Sarah.FordNeorr@jacksonlewis.com

An Innovative & Interactive Solution

The recorded modules for academic year 2021-2022 will include:

- 10+ hours of engaging, industry-leading content designed to address annual Title IX team training obligations and related issues, skills, and best practices
- Separate modules for coordinators, investigators, hearing officers, and appellate authorities plus additional segments for party advisors and campus leadership
- Specific focus on issues and challenges unique to community colleges and on administration of early college programs
- 24/7 on-demand access and unlimited sharing within the institution to assist with scheduling, cross-training, re-training, and onboarding
- An in-depth Title IX case law update
- In depth discussion of the anticipated changes under the Biden administration
- The ability to download and post all slides as required by current regulations
- Tracking features to monitor participation and completion

The 2021-22 academic year video training series is available now for pre-order at a discounted rate. It will be released mid-2021.

- For orders received by April 15, 2021: \$7,000.
- For orders received after April 15, 2021: \$8,500.

Special additional discounts available for North Carolina community colleges. Please call to inquire.

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The background of the slide features a low-angle, upward-looking view of a modern building's exterior. The building has a grid-like facade with large windows and balconies. A semi-transparent red rectangular box is overlaid on the right side of the image, containing white text. The text is centered within the red box and reads: "To access the 2021-2022 academic year Title IX video training series trailer and additional information:". Below this text is a blue hyperlink. The overall aesthetic is professional and modern.

**To access the 2021-2022 academic
year Title IX video training series
trailer and additional information:**

<https://www.jacksonlewis.com/titleixtraining>

Throughout the Year/Sustained Excellence Approach

- **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)

What to Do With This Space

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

Suggested Next Steps

- **Careful evaluation of best going forward approach, taking into account unique institutional characteristics and culture**
- **If interested, contact me for totally complimentary, zero commitment, half-hour consultation**
 - Discuss training approach/needs
 - General team Q&A
 - If interested, discuss training series features, pricing, available discounts (especially pre-4/15), testimonials (from other System schools), potential customization and referrals for other options, etc.
- **Level up by implementing changes**
- **Be great!**

Questions?

Josh Whitlock

JL firm bio:

<https://www.jacksonlewis.com/people/joshua-d-whitlock>

Josh.Whitlock@jacksonlewis.com • (980) 465-7237

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Thank **you.**