



STETSON LAW

46th National Conference on Higher
Education Law & Policy

Title IX Bootcamp: Navigating Ever-
Changing Regulatory Requirements
and Setting Your Campus Up for
Success

Blaze Bowers & Emma Hempel

GRAND RIVER | SOLUTIONS

MEET YOUR FACILITATORS



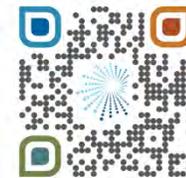
Blaze Bowers

Blaze Bowers (he/him) is a Regional Director for Client Relations & Engagement for Grand River Solutions. In this role, Blaze facilitates relationships with prospective and current clients. Blaze serves clients in the Southeast. He partners with schools, businesses, non-profits, and institutions of varying types, collaborating to assess organizational needs, identifying relevant solution services, and supporting clients through the implementation of products and services. Blaze engages with Grand River Solutions leadership and team members in strategic planning and business development, while collaborating to identify emerging needs and future solutions in the various client sectors.



Emma Hempel

Emma Hempel (she/her) is a Title IX Coordinator and facilitates Title IX and Equity training for Grand River Solutions. Emma serves as a Title IX Coordinator for both large and small public and private institutions across the country. Emma also specializes in and leads seminars on the Intersection of Sexual Violence and the LGBTQ Community, and Sex, Gender, Identity and Practice.



AGENDA



THE EVER-EVOLVING LANDSCAPE OF TITLE IX

01

TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972

”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.”

20 U.S.C. § 1681 (1972).

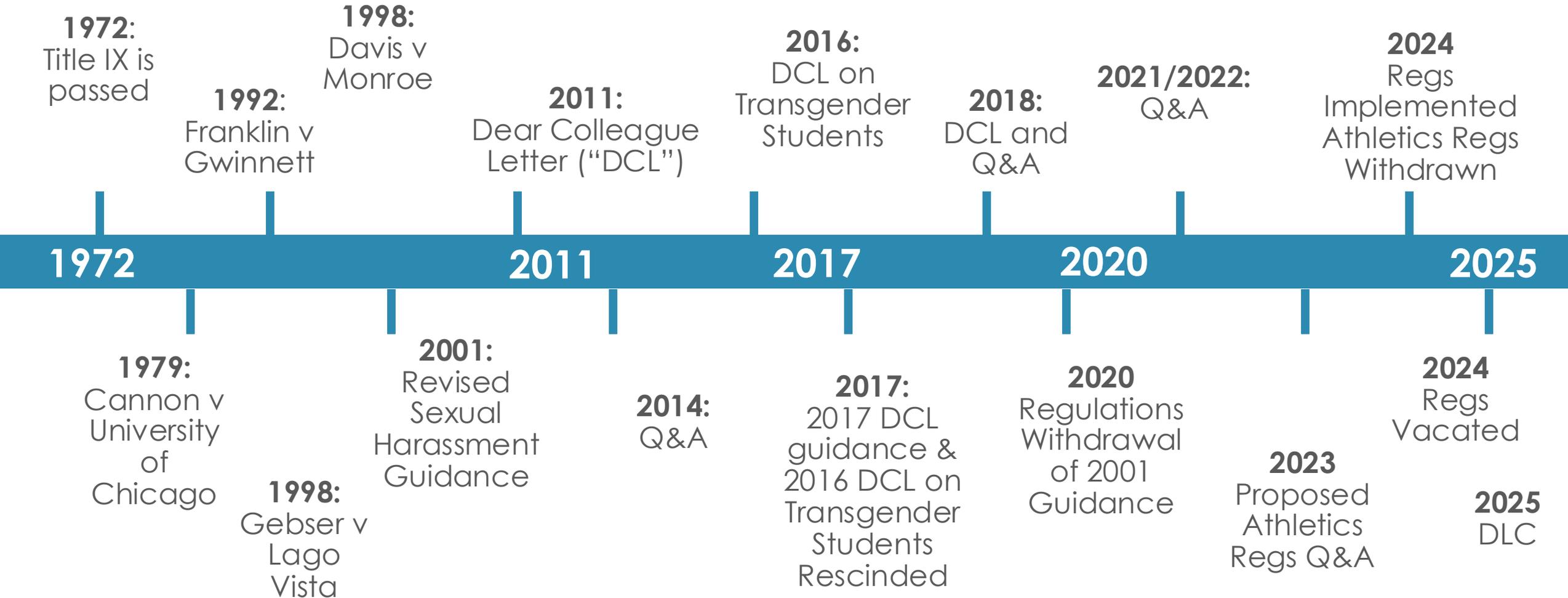


TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

THE HISTORY OF TITLE IX

A TIMELINE



THE TITLE IX REGULATIONS

SEXUAL HARASSMENT ONLY



Narrows the definition of sexual harassment;



Narrows the scope of the institution's educational program or activity;



Narrows eligibility to file a complaint;



Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

SEXUAL HARASSMENT: SECTION 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient **conditioning the provision** of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).



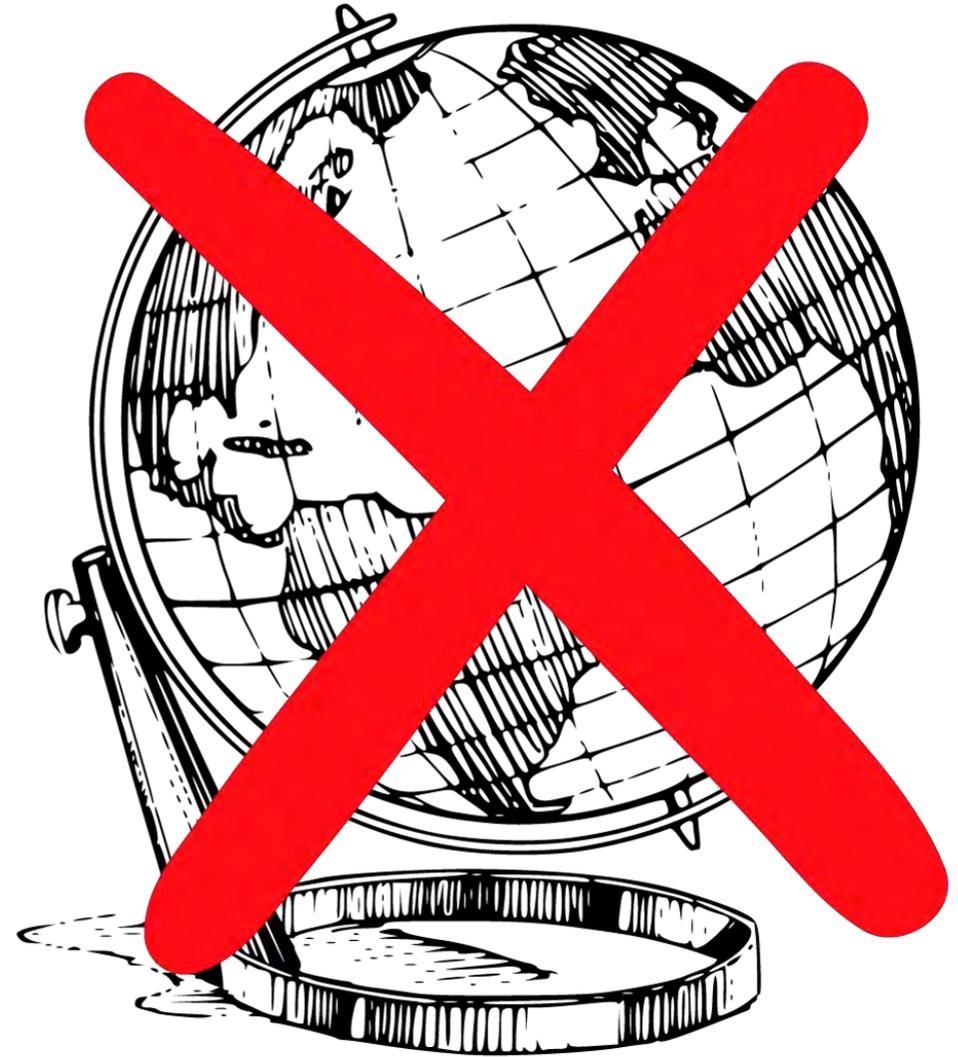
COVERED GEOGRAPHY

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ An off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

NOT COVERED GEOGRAPHY

- x Off campus conduct, even if it has an impact on the educational program or activity;
- x Conduct that occurs outside of the United States.



COVERED INDIVIDUALS

ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30

- Applicant
- Enrolled or Employed
- Accepted or Hired



WOULD THIS FALL UNDER TITLE IX?

Taylor, a 2nd year student, comes into the Title IX Office on Monday morning requesting a meeting, sharing that "Alex raped me at a party on Saturday at the 'A Capella House'."

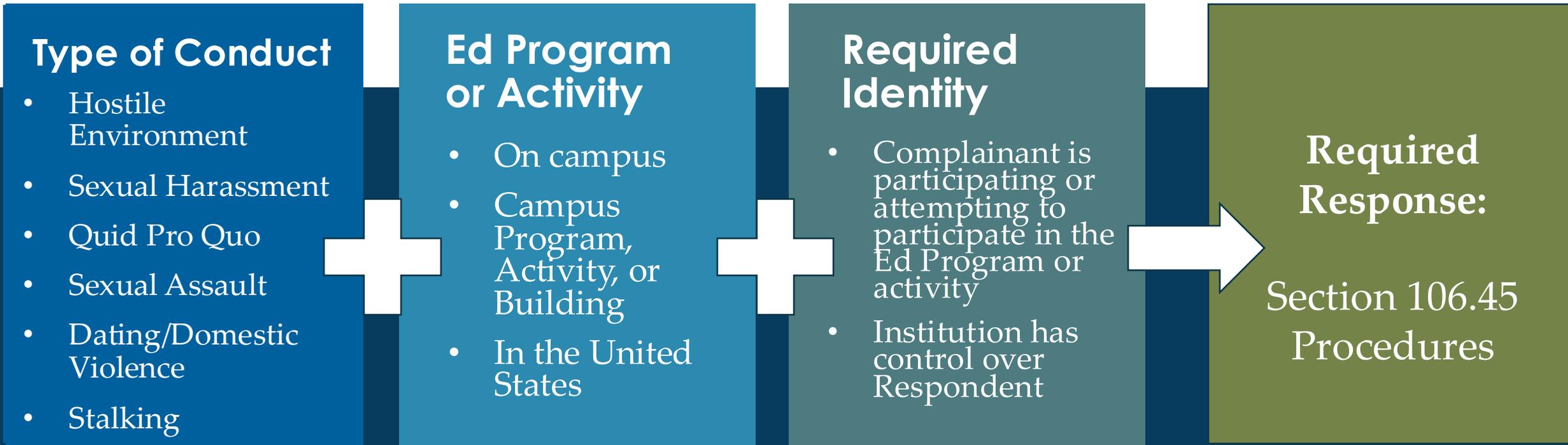
Some members of the A Capella club rent a house off-campus and they frequently throw parties.

Taylor is alleging "Alex raped me when I was drunk at the A Capella House."

- Would this fall under Title IX?
- Why or why not?
- What other information would you need to find out to make this determination?

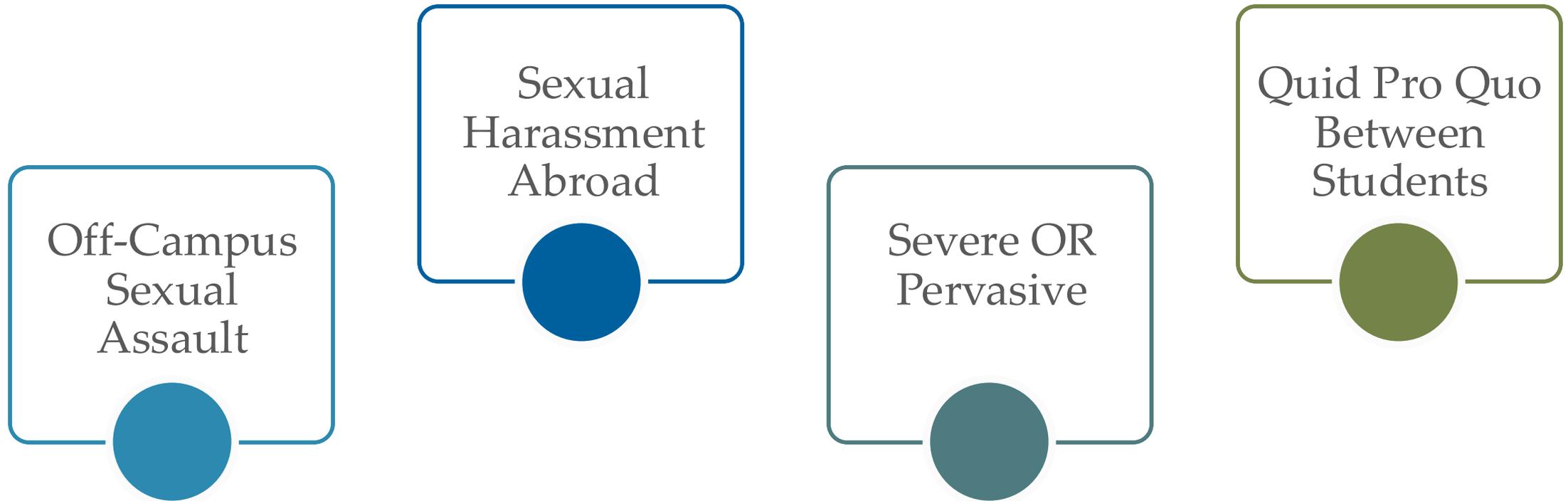


TITLE IX APPLICATION (POST-MAY 2020)



CONDUCT FALLING OUTSIDE THE SCOPE OF TITLE IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures comply with VAWA/Clery and other intersecting federal and state laws



IS THIS TITLE IX SEXUAL HARASSMENT?

You receive a third party report from a Coach who heard some rumors about a student on their team, Dani.

Dani is constantly receiving sexually explicit photos via Snapchat from another teammate. Dani has asked them to stop numerous times. When they are at practice together, this individual often approaches Dani to make jokes of a sexual nature. This has happened about 3 times so far this week. Dani usually laughs it off. Dani emailed me saying they needed to miss practice today because they are "sick".

Why? Why not? What other information would you need to know?

INITIAL RESPONSE REQUIREMENTS



1. Receipt of Report

2. Outreach/Response from Title IX Coordinator

3. Supportive Measures, Regardless Whether
Formal Complaint is Filed

4. How to File

5. Options for Resolution

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal opportunity to present evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

FINAL RULE § 106.45(B)(8)

“Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.”



APPEALS: MANDATORY GROUNDS

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

OTHER REQUIREMENTS OF THE REGULATIONS

Designation of a Title IX Coordinator

Dissemination of policy

Separation of responsibilities

Training and posting of training

Impartiality

Record keeping

SUPPORTIVE MEASURES

Non-disciplinary

May not
unreasonably
burden the other
party

Designed to restore
or preserve equal
access

Non-punitive

As appropriate and
reasonably
available

Confidential

EXAMPLES OF SUPPORTIVE MEASURES

- Assistance obtaining access to counseling, advocacy, or medical services
- Assistance obtaining access to academic support and requesting academic modifications and supportive measures
- Changes in class schedules
- Assistance requesting changes in work schedules, job assignments, or other work accommodations
- Changes in campus housing
- Safety escorts
- Leaves of absence
- Mutual restrictions on contact between the Parties (“No-contact” orders)



**“MUTUAL
RESTRICTIONS
ON CONTACT
BETWEEN THE
PARTIES”**



BEFORE THE INTAKE MEETING

Initial Outreach and Preparation

02

INITIAL OUTREACH

Outreach

- How and When to Conduct Initial Outreach
- Elements of Initial Outreach
- Follow-up Frequency
- Document Management

HOW ARE YOU CONDUCTING INITIAL OUTREACH TO COMPLAINANTS?



CONDUCTING OUTREACH: BEST PRACTICES



- Identifying Complainant/Party
- Electronic/Email vs Phone Call
- Safety Concerns
- Utilize Case Management Systems (where possible)
- Communication Styles and Outreach Content

ELEMENTS IN INITIAL OUTREACH

- Introduction of name/role/scope of your work/office
- Context for the outreach (why you are reaching out)
- Right to make a report
 - *To institution*
 - *To police*
 - *No report at all*
- Confidential/non-confidential resources
- On campus resources, community resources
- Invitation to meet
- Support Person
- Policy link
- VAWA Resources, if applicable

FOLLOWING UP

- How many follow-up outreaches do you conduct?
- Is there ever a time where you do more or less?
- How frequently do you conduct outreach?
- What do the follow-up attempts look like?



PREPARING FOR THE INTAKE

Preparation Before The Meeting

03

PREPARING FOR THE INTAKE MEETING

- Familiarize yourself with names/parties
- Identify areas where you need additional information or clarity
 - What else do you need to know to connect conduct to policy?
- Review relevant policies
 - Does it appear that the Title IX Coordinator may need to move forward regardless of the Complainant's wishes?
- Threat assessment(emergency removal, timely warning)
- Check your bias
- Prepare mentally/emotionally for the conversation

ACTIVITY 1: INCIDENT REPORT

What follow-up questions would you want to ask during your initial intake? What context would be important to know?

I, Brittany Christina, Resident Assistant for College Hall was approached by my resident, Sammy Ward, who stated that they were sexually assaulted by Dylan Cripe. Sammy was extremely upset, and it was very difficult to understand as they were talking through their sobs. They stated that they and Dylan were at a party when they began to have an argument and decided to go outside to figure it out. Sammy said that Dylan then sexually assaulted Sammy when they went outside and no one else was around to witness the event.

INTAKE MEETING

Meeting with the Party

04



Goals of an initial intake meeting



GOALS OF THE INTAKE MEETING

- Review supportive measures and pathways for resolution
- Gather enough information to connect conduct to policy
- Ask about the impact on the Complainant
- Discuss the options for resolution or retention of the complaint
- Be forthcoming about responsibility to move complaint forward (if applicable)
- Safety? Threat assessment referrals? Clery?



**How does an
investigative
interview differ
from an initial
intake meeting?**



ESTABLISHING RAPPORT



THINK, PAIR, SHARE:

- How can you establish rapport?
- What are some things that you should **not** say to build rapport?
- What are environmental elements/choices that are important for this meeting?



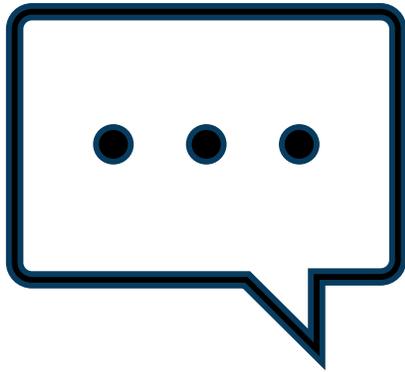
ESTABLISHING RAPPORT: VERBAL COMMUNICATION

- Verbal communication tips
 - Ice-breaker questions/conversation
 - What to say and not to say
 - Tone of voice
 - Restate the purpose of the meeting/scope of the meeting
- Ask open ended questions
 - Help me understand...
 - Can you tell me more about...
- Be comfortable with silence



ESTABLISHING RAPPORT: VERBAL COMMUNICATION

WHAT ARE WORDS AND PHRASES TO AVOID?



- I believe you
- I hope you are doing well
- How are your classes going this semester?
- Have a great weekend!
- Well, at least...
- Thank goodness...!
- What else?

ESTABLISHING RAPPORT: VERBAL AFFIRMATIONS



- Thank you for sharing your experience.
- I understand that this can be a lot of information. Ask as many questions as you need.
- This is your choice and you should do what you feel is best for YOU.
- I want to empower you to make a pathway that feels right for you, not anyone else.
- I can tell this is difficult for you because....(you are crying, you said you aren't sleeping regularly, etc)
- I understand this is a lot and if you need a moment we can take a break.



**WHAT ARE THE
HARD QUESTIONS
FOR YOU TO ASK?**

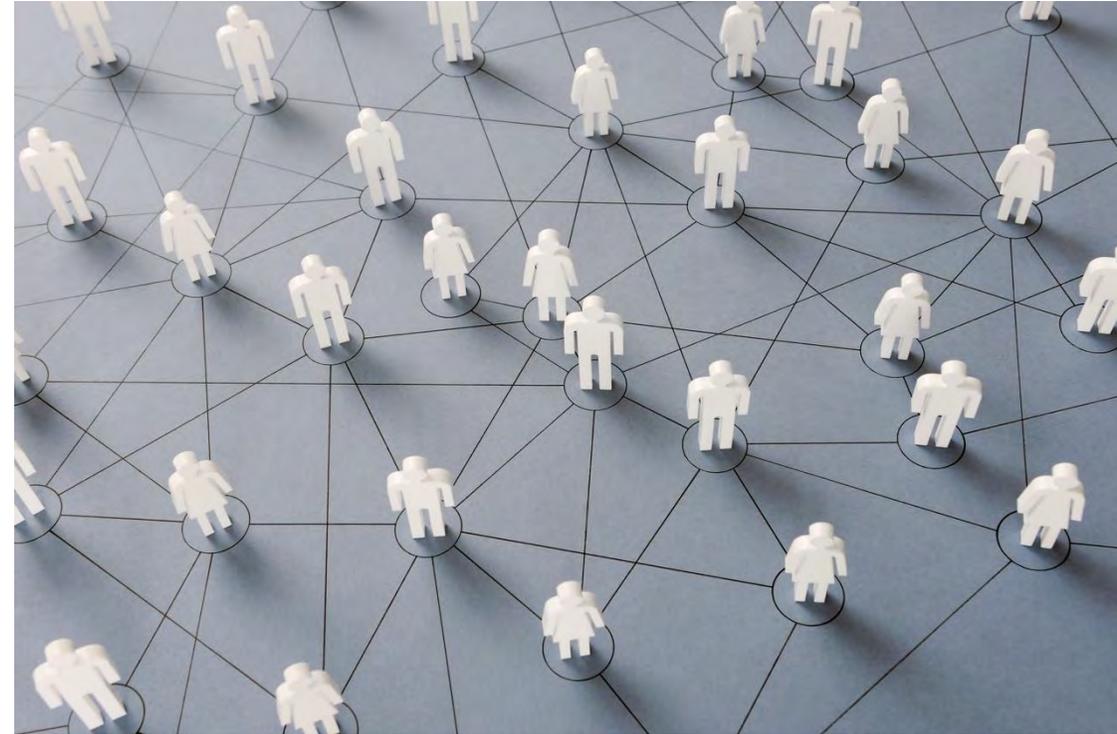


HOW TO ASK THE HARD QUESTIONS

- Lay a foundation
 - Explain why you are asking
- Be deliberate and mindful
 - “Can you tell me more about....”
 - “Help me understand what you meant when you said...”
 - “Are you able to tell me more about...”
 - “Tell me more about how this has impacted you...”

CONNECTING CONDUCT TO POLICY

- The allegation is only as strong as your connection to the policy.
- Conduct/behavior needs to be correlated to the alleged policy violation.
 - If the behavior, as alleged is true, which policy would it fall under? Title IX? Other campus policy?



CONNECTING TO POLICY SCENARIO 1

If the conduct as alleged were substantiated, would this be violation of the following policy definition?

- Definition:

- Stalking: Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

- Intake Summary:

- "They stared at me at the dining hall and are creepy." (Title IX Coordinator confirmed there were no additional instances of contact or attempted contact, threats, or physical contact.)

SCENARIO 1 ASSESSMENT

"They stared at me at the dining hall and are creepy."

Engaging in a course of conduct on the basis of sex	directed at a specific person	that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

CONNECTING TO POLICY SCENARIO 2

If the conduct as alleged were substantiated, would this be violation of the following policy definition?

- Definition

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

- Summary of Intake:

- My vice-president made several comments to me that were sexual in nature. They frequently make sexual comments about my body during one-on-one meetings. When I walk into a meeting, they always make a comment about my appearance. Last week, they sent me a text message asking, "would I ever consider a threesome?" I no longer feel comfortable attending departmental meetings or meeting with them in general. Honestly, coming to work is a challenge.

SCENARIO 2 ASSESSMENT

My vice-president made several comments to me that were sexual in nature. They frequently make sexual comments about my body during one-on-one meetings. When I walk into a meeting, they always make a comment about my appearance. I no longer feel comfortable attending departmental meetings or meeting with them in general. Honestly, coming to work is a challenge.

Unwelcome sex-based conduct	that is so severe, pervasive, and objectively offensive	effectively denies a person equal access to the recipient's education program or activity.
		

REPORT RESOLUTION

Support-Based Only,
Informal/Alternative, or Formal

05

HOW TO PROCEED TO RESOLVE?

Support- Based Only

No formal
process

Alternative/ Informal

Signed
agreement;
Voluntary;
What records?

Formal/ Investigation/ Hearing

All
requirements of
106.45

SUPPORT-BASED RESOLUTIONS

SUPPORT-BASED RESOLUTIONS

- Supportive Measures
- Targeted Education
- Educational Conversations



FORMAL COMPLAINT & NOTICE REQUIREMENTS

FORMAL COMPLAINT FILED

By Complainant

**By the Title IX
Coordinator**

FACTORS TO CONSIDER WHEN DETERMINING WHETHER TO FILE A FORMAL COMPLAINT



Allegations of
Violence



Threats

Use of
Weapons



Serial
Predation



A FORMAL COMPLAINT MUST INCLUDE:

The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include: Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for [a](#) resolution or investigation.

DISMISSING COMPLAINTS

Mandatory

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

Discretionary

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

CAN PROCEED UNDER OTHER POLICY



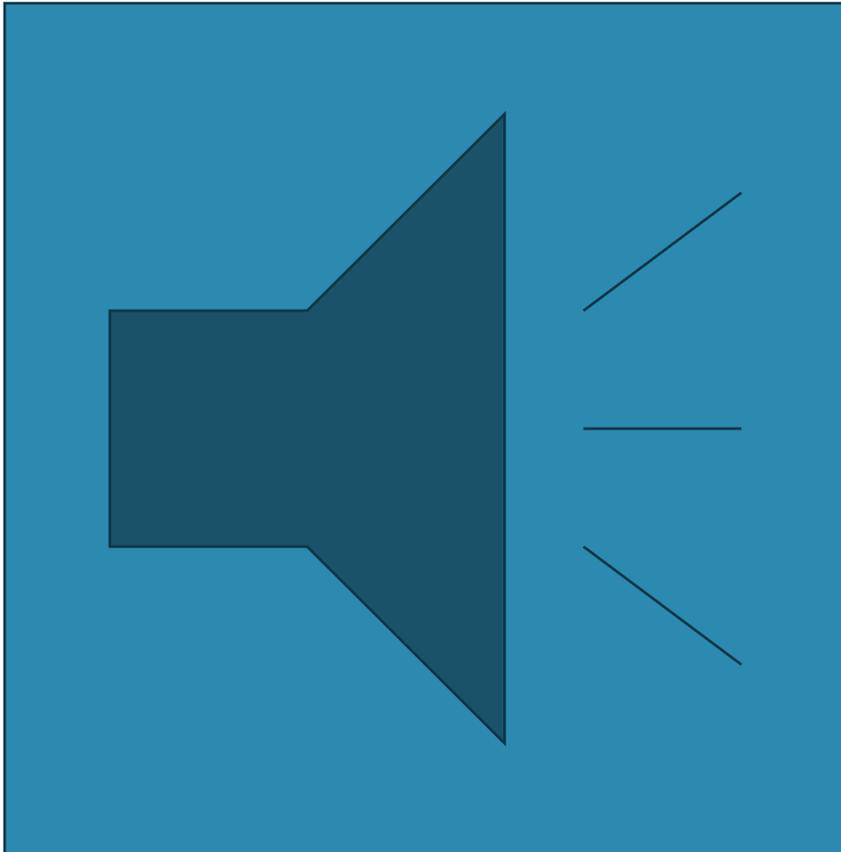
NOTICE OF ALLEGATION REQUIREMENTS (1)

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under §106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

NOTICE OF ALLEGATION REQUIREMENTS (2)

- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

NOTIFYING THE RESPONDENT



FIRST- SAFETY

Make sure support is available

Written notification meetings and sufficient time to prepare

Don't send on a Friday

Don't send at 5pm

Notification method

Consider impact of notification on Respondent

ADVISOR OF CHOICE

The advisor
can be
anyone,
including an
attorney

Institutions
cannot place
restrictions on
who can
serve

No training
required

Institution must
provide advisor
for the purposes
of
questioning only

FORMAL COMPLAINT RESOLUTION

Informal Resolution

- Formal Complaint required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

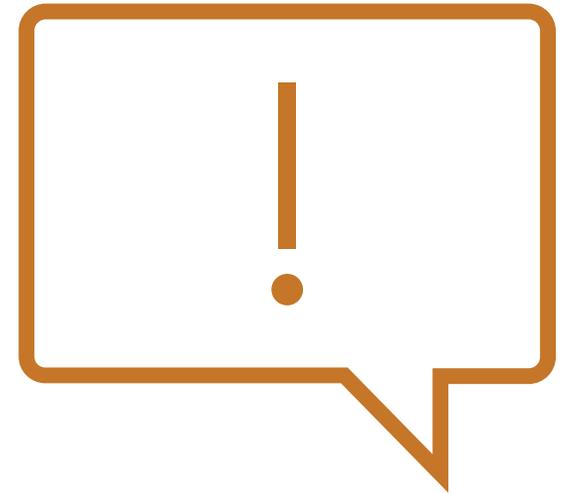
Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

ALTERNATIVE RESOLUTIONS

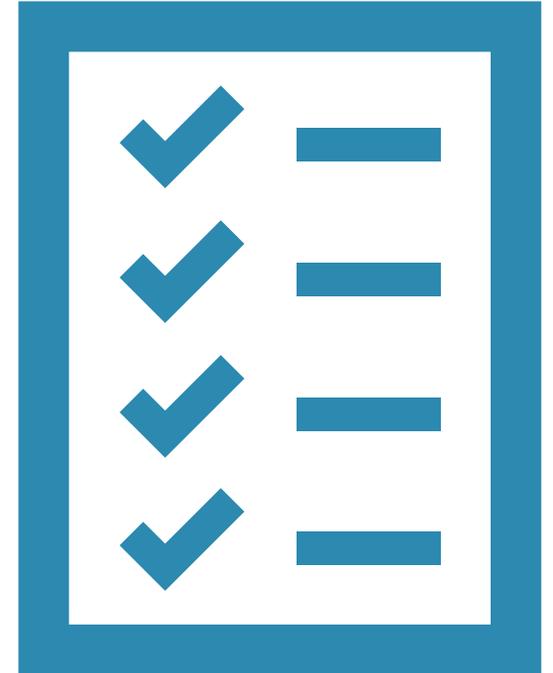
ALTERNATIVE RESOLUTION REQUIREMENTS

- Formal Complaint must be filed
- Participation in an alternative resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the alternative resolution must be obtained
- Facilitators of alternative resolution must be trained



ALTERNATIVE RESOLUTION NOTICE REQUIREMENTS

- The allegations,
- The requirements of the alternative/informal resolution process
 - Including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations
 - Provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the alternative resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared;





FACILITATORS OF ALTERNATIVE RESOLUTION AS WITNESSES

Informal/alternative resolution is prohibited to resolve allegations that an employee sexually harassed a student.



FORMAL RESOLUTION

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

TITLE IX COORDINATOR'S ROLE

In the Investigation

- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to the parties



PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

TITLE IX COORDINATOR'S ROLE

In the Adjudication

- Title IX Coordinator may not serve as the decision maker
- May serve to support the decision maker(s)
- May participate in the hearing to provide logistical support to decision makers
- Responsible for effective implementation of remedies imposed

DON'T FREEZE



Why Appeals Are a Good Thing

FINAL RULE § 106.45(B)(8)

“Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.”

TITLE IX COORDINATOR'S ROLE

In the Appeal



- Title IX Coordinator may not serve as an appellate reviewer
- May serve to support the appellate reviewer/panel
- May provide logistical support
- May coordinate implementation of appellate findings, where appropriate.
- Responsible for effective implementation of remedies imposed

THE GENERAL "RULE" FOR PUBLIC INSTITUTIONS

- Some Circuit Courts have concluded “some” form of questioning among the parties is a due process minimum, such as by questions posed to parties and witnesses through a hearing panel.
- Ninth Circuit: No hearing needed
- Many say indirect questioning is satisfactory, adversarial questioning is not necessary

3RD CIRCUIT

“Fair process” at private university would require “the modest procedural protections of a live, meaningful, and adversarial hearing and the chance to test witnesses’ credibility through some method of cross-examination”



OF COURSE, THERE ARE “THOSE” CIRCUITS

- *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018): due process at public institutions would require some form of live cross-examination in “credibility” cases
- *University of the Sciences* (3rd Circuit): “fair process” at private university would require “the modest procedural protections of a live, meaningful, and adversarial hearing and the chance to test witnesses’ credibility through some method of cross-examination”
- 9th Circuit: requiring private universities to conduct the hearing envisioned by the court of appeals was contrary to fair procedure caselaw.



Putting it All Together

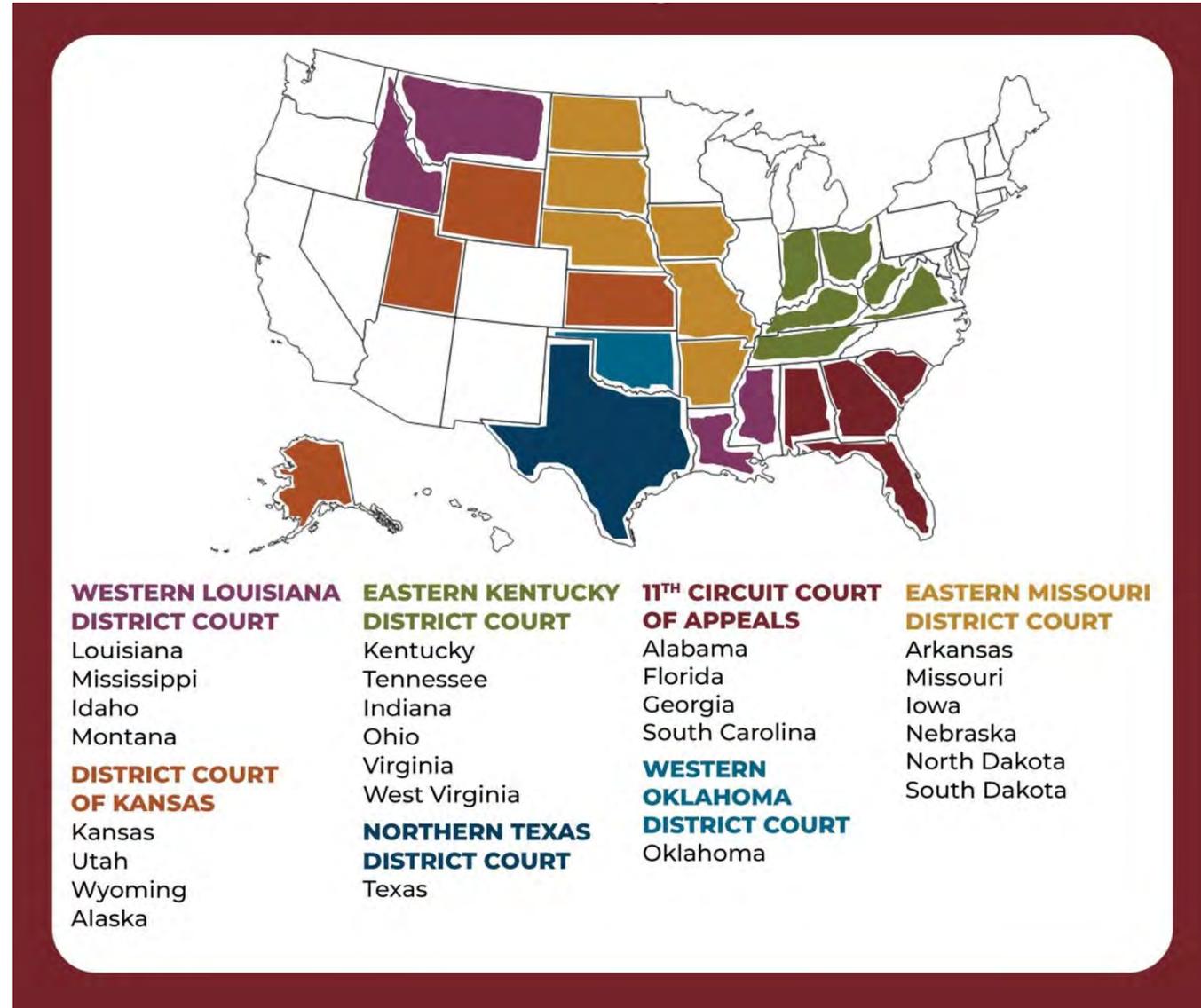
LEGAL UPDATES

06



WHERE WE WERE

- Implementation date was August 1, 2024
- Seven lawsuits resulted in widespread injunctions—26 states and many institutions and districts
- OCR acknowledges injunctions and that it cannot enforce the new regulations in those states or against the named institutions



BACK TO 2020 FOR THOSE UNDER INJUNCTIONS

"The Final Rule and these resources do not currently apply in those states and schools. Pending further court orders, the Department's Title IX Regulations, as amended in 2020 ([2020 Title IX Final Rule](#)) remain in effect in those states and schools."

- Department of Education November 25, 2024



WHERE WE ARE

U.S. District Court for the Eastern District of Kentucky

- One of the 7 lawsuits about the regs
- Already issued a preliminary injunction on June 17, 2024
- Vacated the regulations on January 9, 2025

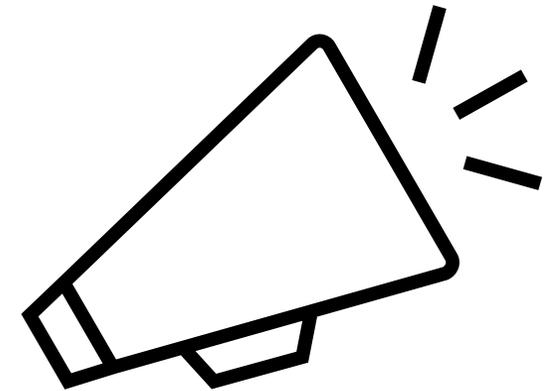


WHY VACATUR? IN THE COURT'S WORDS...

- "Because the Final Rule and its corresponding regulations exceed the Department's authority under Title IX, violate the Constitution, and are the result of arbitrary and capricious agency action."
- "Nothing in the text . . . of Title IX to suggest that discrimination 'on the basis of sex' means anything other than it has since Title IX's inception"
- "Offends the First Amendment"
- "Vague and overbroad"
- No "reasoned explanation for departing from its longstanding interpretation of Title IX."
- *Bostock* "did not purport to address bathrooms, locker rooms, or anything else of the kind."

TITLE IX LEGAL UPDATES

- NIL & Title IX
 - House Settlement
 - NCAA Updates
 - Biden administration's ED guidance on NIL/Title IX
 - Trump administration rescinds guidance
- Vacatur of the 2024 Title IX Reg's
- *Loper Bright & Chevron*
- Trump Administration: Potential Changes
- Trump Administration's ED Guidance on Gender
- A quick note on Title VI and Title VII
- *Terrell v. Alabama State University* (11th Cir.)



IS THERE CONSISTENT CAMPUS-WIDE AGREEMENT?

Handling of intersectional cases

Pay equity

Grade disputes

What acts (really) violate the policy

Sanctioning



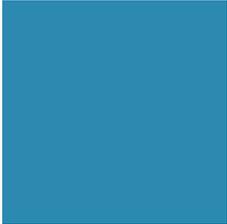
TRAINING & EDUCATION

Educating Ourselves and Our
Communities

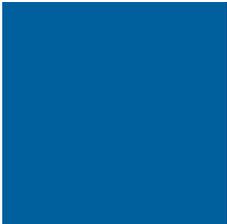


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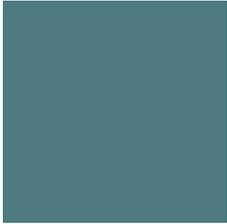
SOURCES OF TRAINING REQUIREMENTS



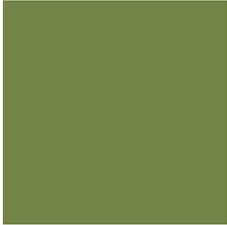
Title IX Final Regulations



Violence Against Women Act



State Law



Resolution Agreements

TRAINING AND EDUCATION: TWO AREAS OF FOCUS

01



Institutional Response to Sex Discrimination

02



Prevention Education

INSTITUTIONAL RESPONSE TRAINING

1. Institutional Policies and Procedures
2. Prohibited Conduct
3. Options for Confidential Support
4. The Identify, Role, and Requirements of the Responsible Employee
5. Options and methods for Reporting
6. The Grievance Process
7. The Role of the Title IX Coordinator



**A really
important moment.
Listen up.
It's okay...**



To not know the answer to every question thrown your way



To say, "I don't know," "I'd like to think about that," "I'll get back to you," "Thank you for sharing your perspective."



To decline to answer a question



To recognize and assert your expertise

WHO MUST RECEIVE TRAINING?

Title IX Staff*

- Coordinators
- Investigators
- Decision Makers (hearings and appeals)
- Facilitators of Informal Resolution

Faculty

- New faculty
- Existing faculty
- Adjunct Faculty
- Supervising faculty

Students

- New Students
- Existing Students
- Specialized populations
- Student staff

Staff

- New/existing staff
- Senior leadership
- Public Safety/campus law enforcement
- Health care workers

*“Those who are charged with ensuring a prompt, fair, and impartial investigation and result.” (VAWA)

COMMUNITY PARTNERS?

Boards of Trustees

Law Enforcement

Advocacy Groups

Health Care Providers

Attorneys

Media

TRAINING FOR TITLE IX STAFF



The scope of the institution's education program or activity (i.e., its Title IX "jurisdiction")

How to conduct the grievance process

How to serve impartially

The technology to be used at a live hearing *

Issues of relevance of questions and evidence *

Rape shield protections; and, *

Issues of relevance in creating an investigation report. *

SPECIAL CONSIDERATIONS FOR TRAINING & EDUCATION

Explaining the narrowed scope of Title IX

Explaining the institutional decision for two processes/procedures

Responsible Employee challenges

Burden of proof challenges

Length of Training

Time for questions/community processing

PREVENTION EDUCATION: TITLE IX REGULATIONS



"And while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients' discretion to provide students (or employees) with educational information."

85 Fed. Reg. 30063 (May 19, 2020).

PREVENTION EDUCATION: VIOLENCE AGAINST WOMEN ACT (VAWA)

A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.

Ongoing prevention and awareness campaigns.



ELEMENTS OF ANNUAL TRAINING STRATEGY

- Identify population to be trained
- Determine topic
- Schedule the training
- How will you deliver the training
- Partnerships
- Communications
- Community input/feedback
- Engagement as passive education



PREGNANCY

08





TITLE IX

Title IX prohibits discrimination on the basis of sex, which includes pregnancy and parental status – in educational programs and activities

TITLE IX & PREGNANCY



- Cannot exclude or treat students (or employees or applicants) differently based on pregnancy or related conditions
- "Related conditions" include "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"

TITLE IX OBLIGATIONS

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



Summary of the obligations relating to pregnant students

Do you have a student leave policy? Does this student qualify?

Treat pregnancy like a justification for a leave of absence for a period of time as deemed medically necessary by the student's doctor.

"TEMPORARY DISABILITY"?

Treat disabilities related to pregnancy and related conditions in the same manner and under the same policies as any other temporary disability or physical condition.

TITLE IX

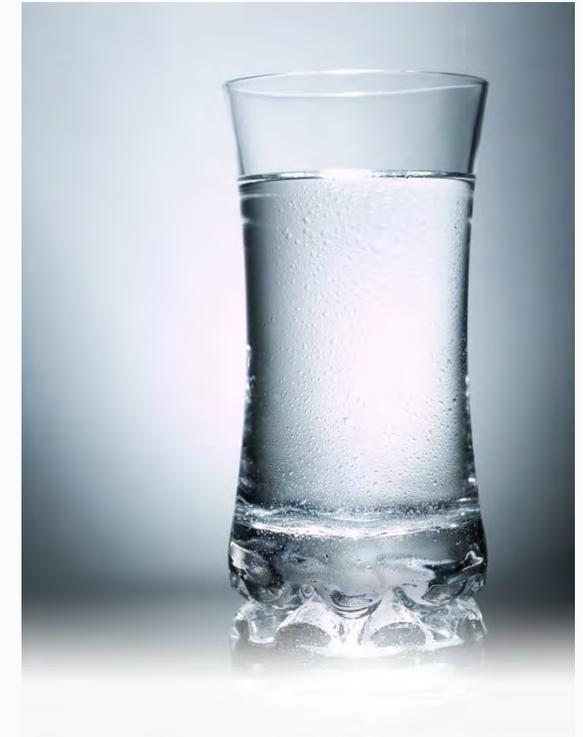
Nondiscrimination here is broad

- Extends to those experiencing pregnancy and related conditions, and treating parental/family status differently based on sex
- Equitable access and ability to fully participate in academic program, activities, practicums/field placements, and athletics



ADJUSTMENTS UNDER TITLE IX

- Furniture size, shape, position
- Remote learning/hybrid learning
- Breaks, access to food or hydration
- Ability to reschedule tests
- Excused absences specific to treatment and care
- Late submission of expected work
- Alternative make up work of similar or like nature
- Excused absences for parenting and medical care for infant or child



“Medically necessary”
based on assessment and
“note” from treatment
provider for immediate
implementation

ADA/504 AND PREGNANCY

Pregnancy alone is not a disability...EXCEPT UNDER...



SECTION 504

It may be considered a temporary disability in certain circumstances.

ADA

It may be considered a disability when one or more impairments related to pregnancy are present OR when a condition arising from pregnancy becomes long-lasting (i.e.: post partum depression or gestational diabetes that becomes Type II)

What's The Difference?

Title IX affords adjustments and/or support measures while ADA/504 affords access and accommodation; each ensure equitable access to educational programs or activities.



Adjustments are time-limited for the period of the documented "medical necessity"



Supportive measures have no medical requirements ; they require only a request as related to a Title IX matter



Accommodations require the presence of a "qualified" disability and/or condition

SCENARIO



You receive the following email from the chair of the Nursing department regarding a pregnant student.

LET'S DISCUSS!

Dear Title IX Coordinator,

I'm not really sure who I should reach out to, because I'm not sure pregnancy really falls within the scope of your office, but maybe you can redirect me.

I have a student in the nursing program who just informed two of her professors that she will need to miss a month, or maybe even more, of her courses towards the end of the semester because she is pregnant.

I suggested one of her professors, who I know she is close with, encourage her to take a leave of absence because there is no way a student can miss that much class and lab time. This isn't my requirement, this is ACEN and our state licensure requirements. We cannot compromise curriculum for one student.

Sincerely,

Nicole—Department Chair—Nursing

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