

Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

CONTENT ADVISORY

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.







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Pregnant and Parenting Students

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Introduction to Title IX and Athletics

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Sexual Orientation, Gender Identity, and Gender Expression

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Technological Abuse and Cyber Harassment

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Introduction to Trauma-Informed Practices

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Final Planning



TITLE IX NOTICES OF PROPOSED RULEMAKING 2022 & 2023

TITLE IX REGULATIONS

1972: Congress passed Title IX of the Education Amendments

1980: the Department of Education's Office for Civil Rights (OCR) given primary responsibility for enforcing Title IX

November 2018:

NPRM PROCESS TIMELINE

July 2022: NPRM published in the Federal Register and the 60-day public comment period began

September 2022: Review and comment period ended
Received 240,000+ comments

April 2023: OCR published a separate NPRM outlining proposed changes to the Title IX regulations focused on gender identity and athletic participation; 30-day public comment period
Received 150,000+ comments

October 2023: Anticipated publication of both the sexual harassment and athletics Title IX Final Rules

OCR has not yet announced an implementation deadline or timeline for either set of new regulations.

PREPARING FOR IMPLEMENTATION

Continue to fulfill obligations under the current regulations for the 2022-2023 academic year.

Steps to Take Now:

- Educate yourself on the proposed regulations

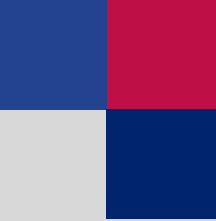
- Prepare to educate your community on the changes

- Identify stakeholders that will need to be involved in making policy decisions (e.g., whether to have hearings)

- Determine how you will manage policy changes

- Plan for the training needs for your community

- Consider state laws, court decisions, and other regulations that may affect your institutional approach





THE IX COMMANDMENTS

INVESTIGATION

(plus prompt &
fair per
VAWA Sec. 304)



Thorough

Reliable

Impartial

PROCESS



Prompt

Effective

Equitable

REMEDIES

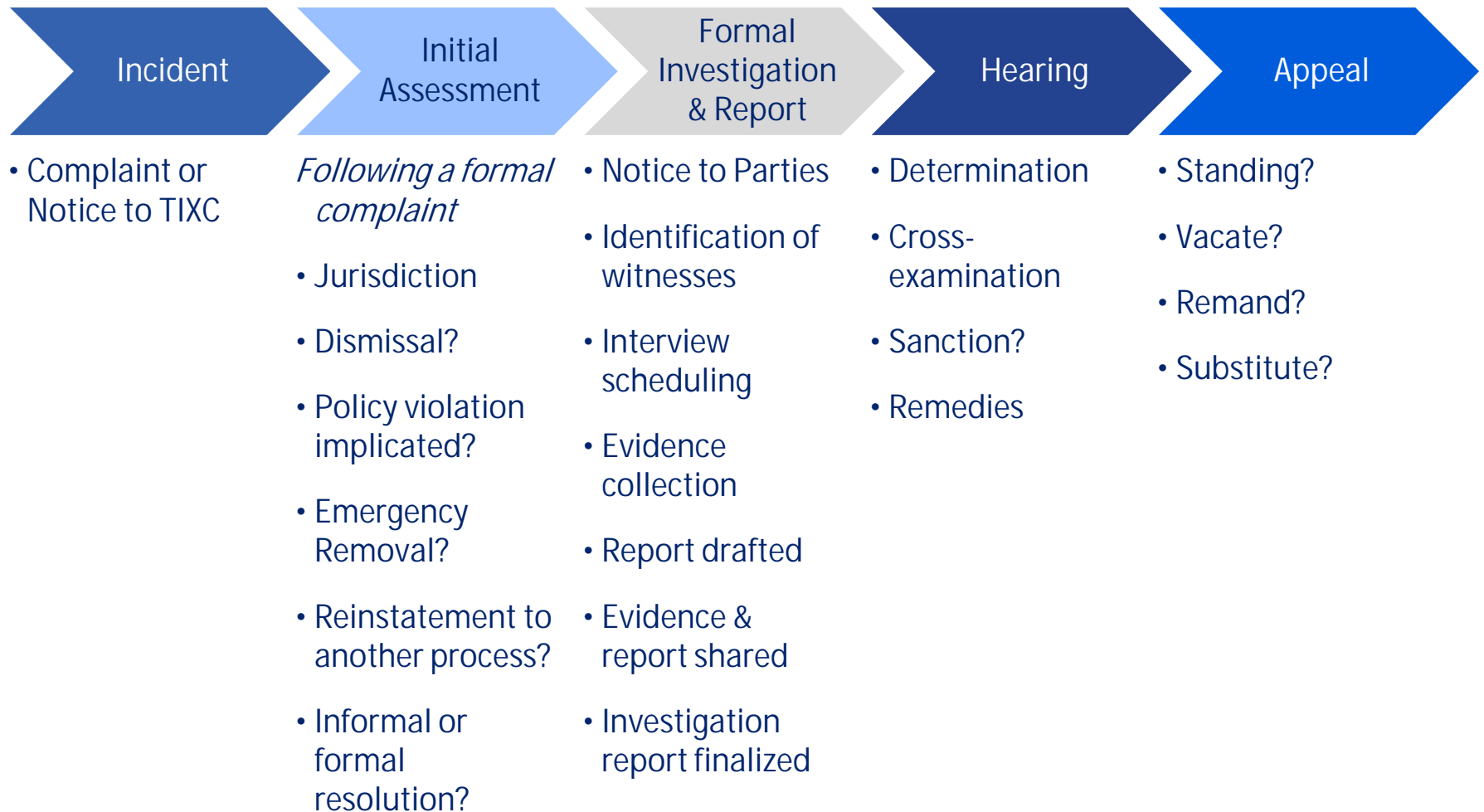


Act reasonably
to stop
discrimination

Act reasonably
to prevent
recurrence

Act equitably to
remedy effects

THE PROCESS

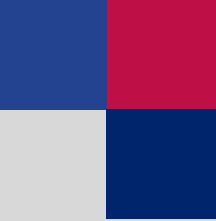


GROUP DISCUSSION

Where are you in your development as a Title IX Coordinator?

What types of issues are you seeing at your institution?





ADDITIONAL CONSIDERATIONS: TITLE IX TEAM STRUCTURE

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ADDITIONAL CONSIDERATIONS: CONFLICT OF INTEREST

Title IX regulations require that any individual designated by a Recipient as a Title IX Coordinator... not have a conflict of interest or bias for or against Complainants or Respondents generally or any individual Complainant or Respondent

- Can be the Investigator

- Cannot be a Decision-maker

- Cannot be an Appeal Decision-maker

- Trained in an unbiased fashion

- Neutrality in title, office location/department, supervisory responsibilities, supervisor

- Non-partisan (in terms of the grievance process)



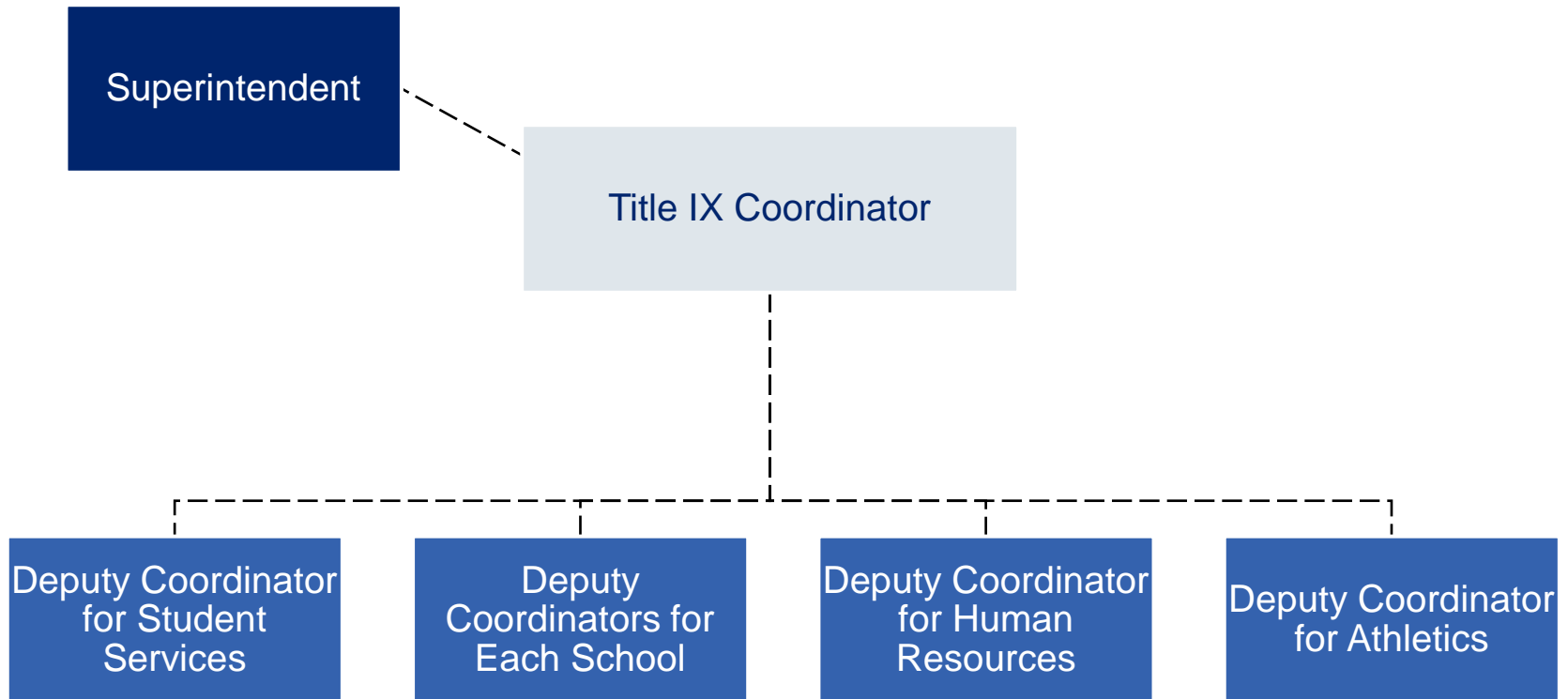




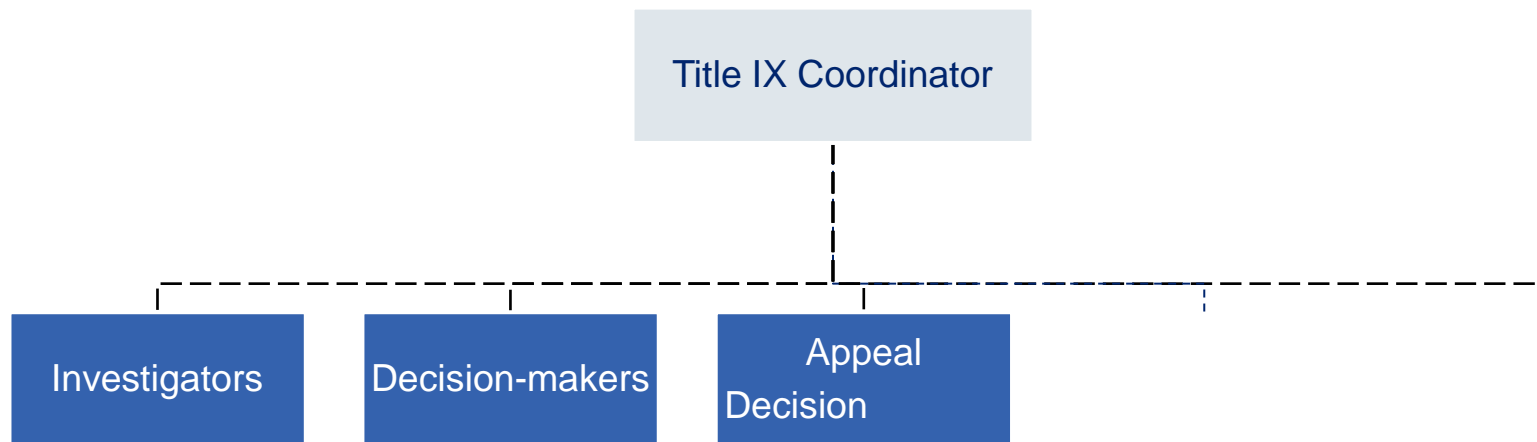
SAMPLE TITLE IX COMPLIANCE TEAM



SAMPLE TITLE IX COMPLIANCE TEAM STRUCTURE K-12



SAMPLE TITLE IX GRIEVANCE PROCESS TEAM



TITLE IX TEAM STRUCTURE: ADDITIONAL CONGRATATIONS

Job responsibilities of Deputy Coordinators

Tailor scope and roles based on culture of Recipient
Delegation!

Multiple campuses/locations

Campuses within a larger system (e.g., SUNY schools)

K-12 Districts

Community College locations

Extension campuses

Online communities

Dual-enrollment oversight

Investigator oversight

How is your campus/district/school structured?

TITLE IX EXTENDED TEAM

Include key constituencies not represented on core team

Legal Counsel

Public Safety/Campus Police/School Resource Officer

School Counselors/Counseling Center

Residence Life

Fraternity and Sorority Life/Student Activities

Prevention Services/Health Educators

Student Health

Others

Regular meetings and coordination

Training and programming

Interaction with behavioral intervention team (BIT)

EVALUATING YOUR TEAM

Mental health check-ins

Have they been reliable?

Have they remained impartial and free from conflicts of interests?

Confidentiality and privacy:

Have you heard “water cooler” chats about complaints?

Complaints of breaches of privacy

Have you been able to trust and count on them?

Have you received allegations against them?

Have they attended required trainings?

EVALUATING YOUR TEAM (CONT.)

Do they engage in training or professional development that is not required?

Are their investigation reports thorough, well-written, and free of biased language and evaluation of information?

Are their decision rationales complete and appropriate?

Are they knowledgeable about a variety of intersectional issues that may impact complaint resolution?

What are other ways to evaluate your Title IX team members?

TITLE IX TEAM DISCUSSION QUESTIONS

What does your core team look like?

Structure

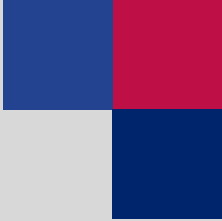
Roles and functions

What does your extended team look like (if applicable)?

What is working?

What is not working?

What would improve your team(s) and its/their functioning?



CASE STUDY





CASE STUDY PART II

The investigator amended the investigation report to include information about Gianna's alcohol consumption.

The investigators recommended that Jeremy be found not responsible for a policy violation based upon the original framing of the complaint.

The hearing panel was comprised of four College employees who had been trained by the Title IX Coordinator in Title IX and hearing procedures.

Gianna requested that the student who found her on the bathroom floor the night of the incident and the RA she spoke to be allowed to testify to the panel. The panel declined this request. Gianna also requested an expert witness to discuss the effects of alcohol and Adderall on the body, and that too was denied.



LEVERAGING AND EMPOWERING TIXC AUTHORITY: VISIBILITY

Students

- Attend meetings
- Connect with student leaders
- Consider ways to include students in program planning and trainings
- Establish trust
- Communicate honestly, openly, and clearly
- Never make promises

Colleagues

- Attend meetings
- Connect with teacher/faculty leaders
- Schedule focus groups
- Keep open door policy
- Steer away from “principal office” mentality
- Establish trust
- Partner and collaborate





POLICY MANAGEMENT

Creating and Implementing Appropriate Policy

Publication Requirements

Coordinating the Overlap of 6cy

CREATING AND IMPLEMENTING APPROPRIATE POLICY & PROCEDURES

The Title IX Coordinator must be an integral part of the policy/procedure development and review process

Ensure all policies/procedures related to sex/gender misconduct and discrimination are legally accurate and complete

Confirm that new or revised grievance procedures are posted and published promptly and that old procedures are removed from publications and websites

Beware of multiple conflicting or varying versions of published policy

- Internally maintain copies of old policies and procedures for reference in the event of a lawsuit, etc.

PUBLICATION REQUIREMENTS

Students and employees should know policy exists, how it works, and how to file a complaint

2020 TIX Regulations require specific information to be published to the following:

- Students (including applicants for admission)

- Employees (including applicants for employment)

- All unions or professional organizations holding collective bargaining or professional agreements with the school/district

TITLE IX COORDINATOR CONTACT

The Title IX Coordinator's contact information, and the school's Title IX-based policy, must be prominently displayed on its website, if any, and in each handbook or catalog

Contact information includes

- Name/Title
- Office address
- Email address
- Telephone number

COORDINATING THE OVERLAP OF MULTIPLE POLICIES

Coordination Responsibilities

Sources of Policy
Requirements

Taking “Inventory”

Policy Management Tips

COORDINATION RESPONSIBILITIES

If the institution has multiple policies and procedures (for faculty, staff, students), the institution must ensure that these policies are not conflicting, or do not contain conflicting definitions

A strong argument for a single policy!

– ATIXA's One Policy, Two Processes Model (1P2P)

Remember live hearings are required for institutions of higher education under Title IX for all sexual harassment formal complaints. This includes faculty, staff, and student sexual harassment complaints.

SOURCES OF POLICY REQUIREMENTS

Federal/State Case Law

Federal/State Statutes

Federal/State Regulations

Collective Bargaining Agreements

Insurance Provider Requirements

Governing Body Policies/Regulations

OCR Resolution Agreements

Best Practices/Risk Management requirements



COORDINATING THE OVERLAP OF VARIOUS POLICIES AND PROCEDURES

Board-level Policy

e.g., Equal Opportunity/Non-Discrimination Policy

Board-level Administrative Procedure

e.g., Harassment Grievance Procedures

Employment/Human Resources Policy and Procedures

Employee/Staff/Faculty Handbooks

Student-level Policy and/or Procedures

e.g., Conduct Code

Student/Parent Handbooks

Informal protocols

e.g., interaction with campus police/public safety, search processes

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Harassment and Discrimination policies and procedures
(required by Title IX, often required under state law)

Anti-bullying/cyberbullying policy (often required under state law)

Transgender and Gender Expansive Student policy/procedures

Staff conduct code/HR policies and procedures

Staff conduct with students

Collective Bargaining Agreements

Employment Contract terms

Hazing policies

Student conduct code and processes (often defined by state law)

Disciplinary policies and procedures (including removal) for students with disabilities

Weapons, violence, and school safety protocols

Child abuse reporting (and procedures) (often defined by state law)

Computer, network, and technology acceptable use

Athletics policies and procedures



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TIPS FOR MANAGING POLICY CHANGES

Take	Take the lead in drafting the policy, if possible
Seek	Seek assistance from legal counsel and compliance administrators
Incorporate	Incorporate constituent feedback by scheduling sessions with key stakeholders
Find	Find an opportunity to train senior administrators and board members as a tool to mitigate policy rejection

CLERY/VAWA COMPONENTS

Educate students, faculty, and staff on the prevention of sexual assault, domestic violence, dating violence, and stalking

Intersects with Title IX and Clery requirements and obligations

Institutional disciplinary procedures shall “ provide a prompt, fair and impartial investigation and resolution.”

Added significant requirements to the content of the Annual Security Report (ASR)

e.g.: victim services & remedies, policy definitions



THE CLERY ACT AND ANNUAL SECURITY REPORTING

Annual Security Report Requirements

Timely Warnings and Emergency Notifications

Training, Policy, and Procedure Requirements



CLERY ACT: ANNUAL SECURITY REPORT

October 2020: 2016 Handbook for Campus Safety and Security Reporting was rescinded and replaced with the Clery Act Appendix for the FSA (Federal Student Aid) Handbook guidance; updated again on January 19, 2021

Clery Geography: Three categories of locations subject to reporting: on-campus; noncampus building or property; public property

Three categories are defined by 34 CFR 668.46(a)

Note: Clery geography and Title IX jurisdiction are separate and overlapping

CLERY ACT:



CLERY ACT: ANNUAL SECURITY REPORT REQUIRED CONTENT

Policies

Regarding alcoholic beverages and underage drinking

Regarding illegal drugs and

Programs

Substance abuse

DV/DV, sexual assault, and stalking prevention

Campus security procedures and practices

Other

Sex offender information

Emergency response and evacuation procedures

Campus crime statistics

Procedures institutions will follow when DV/DV, sexual assault, or stalking is reported

ANNUAL SECURITY REPORT: HATE CRIME CATEGORIES

Categories of prejudice actual or perceived:

Race

Gender

Religion

Sexual orientation

National origin

Gender identity

Ethnicity

Disability



POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include (Cont.):

- Victim's options to notify (may also decline to notify)*
 - Law enforcement (campus and local)
 - Campus authorities

Written notification to students and employees about existing services for:

Counseling

Health

Mental health

Victim advocacy

Legal assistance

Other services available for victims

- Both on campus and in the community

*Some states require law enforcement reporting if the institution is aware of an incident of sexual assault

POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include (Cont.):

Written notification to victims about options for, and available assistance in, changing (at victim's request):

Academic enrollment or class schedule

Living arrangements (on campus)

Transportation access

Working situations

If reasonably available and irrespective of whether the Complainant chooses to report to campus or local law enforcement

POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include (Cont.):

Rights of Complainants and institutional responsibilities regarding protective measures issued by a criminal or tribal court, including:

- Orders of protection

- No contact orders

- Restraining orders

- Similar lawful orders

Possible sanctions or protective measures that [an] institution may impose following a final determination of an institutional disciplinary procedure regarding



POLICIES & PROCEDURES: PROMPT, FAIR, AND IMPARTIAL (CONT.)

If the institution addresses sexual assault, dating and domestic violence, and stalking under more than one policy or process, the Title IX formal grievance process and any other policy or process(es) must be VAWA-compliant

VAWA 2013: ANNUAL TRAINING REQUIREMENTS

Annual training for officials involved in investigating and/or resolving complaints:

The four types of misconduct: Domestic violence, Dating violence, Sexual assault, and Stalking

How to conduct an investigation " that protects the safety of victims and promotes accountability."

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PROGRAMMING AND PREVENTION EFFORTS

VAWA Educational Programs and Campaigns

Prevention Education and Training Checklist

Risk Reduction

VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

Programs should be tailored to each institution and its constituents and be:

Culturally relevant

Inclusive of diverse communities and identities

Sustainable

Responsive to community needs

Informed by research or assessed for value, effectiveness, or outcome (i.e., research conducted according to scientific standards and efficacy assessments performed by institutions and organizations)

Consider environmental risk and protective factors as they occur in the individual, relationship, institutional, community, and societal levels



VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

Programming should include a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking as those terms are defined by the Title IX regulations.

Institutional policies must mirror Title IX (34 C.F.R. § 106.30) regulatory definitions, which include the definitions of:

- Dating violence, domestic violence, sexual assault, and stalking
- Consent in reference to sexual activity

Should also state institutional definition of consent and how it is applied

TITLE IX/VAWA SEC. 304



RISK REDUCTION

Programming should include “information on risk reduction.” (34 C.F.R. § 668.46)

Defined as options designed to:

- Decrease perpetrations and bystander inactions
- Increase empowerment for victims in order to promote safety
- Help individuals and communities address conditions that facilitate violence

Note: Information about risk reduction must not be presented in a manner that encourages victim blaming



INTRODUCTION TO CLIMATE ASSESSMENT

Climate Surveys

Annual Case Analysis

CLIMATE SURVEYS

Climate surveys provide opportunities to better understand your members of your institutional community's experiences

CLIMATE SURVEYS (CONT.)

Climate surveys are something we *get to do*, not something we should fear.

Effective climate surveys shed light on areas of our institutions that need improvement. Think of them as a bridge inspection or elevator inspection; they offer critical data so we can improve and ensure safety.

In a perfect world with no funding limitations and an aspirational focus, climate surveys should be offered to three groups: faculty/teachers, staff, and students.

Each survey would have slightly different questions to assess the particular group's experience with sexual harassment, sexual assault, stalking, and dating/domestic violence





CLIMATE SURVEYS: TOPICS

ATIXA recommends targeted questions to evaluate how well individuals understand the existing sexual assault, harassment, stalking, and dating/domestic violence policy

This involves a survey question with an embedded link asking first if the individual is familiar with the policy and then asking them more specifics about the policy being fair to the Respondent, the Complainant, and its application at the institution





ONLINE SURVEY TOOL FOR CAMPUS SAFETY (CONT.)

Questions shall be designed to gather information on student experiences with domestic violence, dating violence, sexual assault, sexual harassment, and stalking, including the experiences of victims of such incidents.

Questions will include:

- optional demographic information

- incidence and prevalence of domestic violence, dating violence, sexual assault, sexual harassment, and stalking

- students' awareness of campus safety procedures

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ONLINE SURVEY TOOL FOR CAMPUS SAFETY (CONT.)

what response was received, what actions were taken, and the outcome of the matter if a victim reported an incident to different entities

contextual factors, such as whether force, incapacitation, or coercion was involved

institutional affiliation of the respondent, if any

whether a victim reported an incident to Federal, State, local, Tribal, or campus law enforcement

the impact of domestic violence, dating violence, sexual assault, sexual harassment, and stalking on the victim's education

the impact and effectiveness of prevention and awareness programs and complaints processes

ONLINE SURVEY TOOL FOR CAMPUS SAFETY (CONT.)

attitudes toward sexual violence and harassment,
including the willingness of individuals to intervene as a
bystander

other questions, as determined by the Secretary of
Education

An institution of higher education may request, at no cost to the institution, to add additional questions that would increase the understanding of the institution of school climate factors unique to the campuses affiliated with the institution.

ONLINE SURVEY TOOL FOR CAMPUS SAFETY





ANNUAL COMPLAINT ANALYSIS



KEY TAKEAWAYS

Climate surveys, institutional, assessments, and annual complaint analyses can provide rich data that can:

- Help improve the student and employee experience

- Assist the Title IX Coordinator in making more informed prevention and programming decisions

- Provide the Title IX Coordinator with strengths and weakness of their Title IX program

- Provide potential solutions to concerns such as low reporting numbers, low program participation, etc.

- Strengthen the argument for additional resources

- Allow the institution to be more strategic in its approach to compliance





DUAL RESPONSIBILITIES: TITLE IX & SECTION 504 COORDINATOR

SECTION 504

"No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 704(a) Promulgation of nondiscriminatory rules and regulations

504 COORDINATOR OR DISABILITY SERVICES COORDINATOR

Accessibility/Disability Services Coordinator

Verification of the intake of requests for accommodations

Engaging in the interactive process

Identifying with the student or employee appropriate accommodations

Serving as liaison with faculty and supervisors

504/ADA Coordinator

Publication of non-discrimination notice

Oversight of the grievance process

Investigation of grievances

SIMILARITIES BETWEEN TITLE IX AND 504 COORDINATOR

Title IX Coordinator

Ensure compliance with requirements related to sex-based discrimination

Publication of non-discrimination notice

Oversight of the grievance process

Investigation of grievances

504/ADA Coordinator

Ensure compliance with requirements related to disability-based discrimination

Publication of non-discrimination notice

Oversight of the grievance process

Investigation of grievances

Can it be the same person? Should it be the same person?

CONNECTING TIX & DISABILITY

U.S. Dept. of Education, Office for Civil Rights enforcement

Sex-based disability discrimination

Ensure accommodations are made in Title IX process, including coordinating with Disability Services when necessary

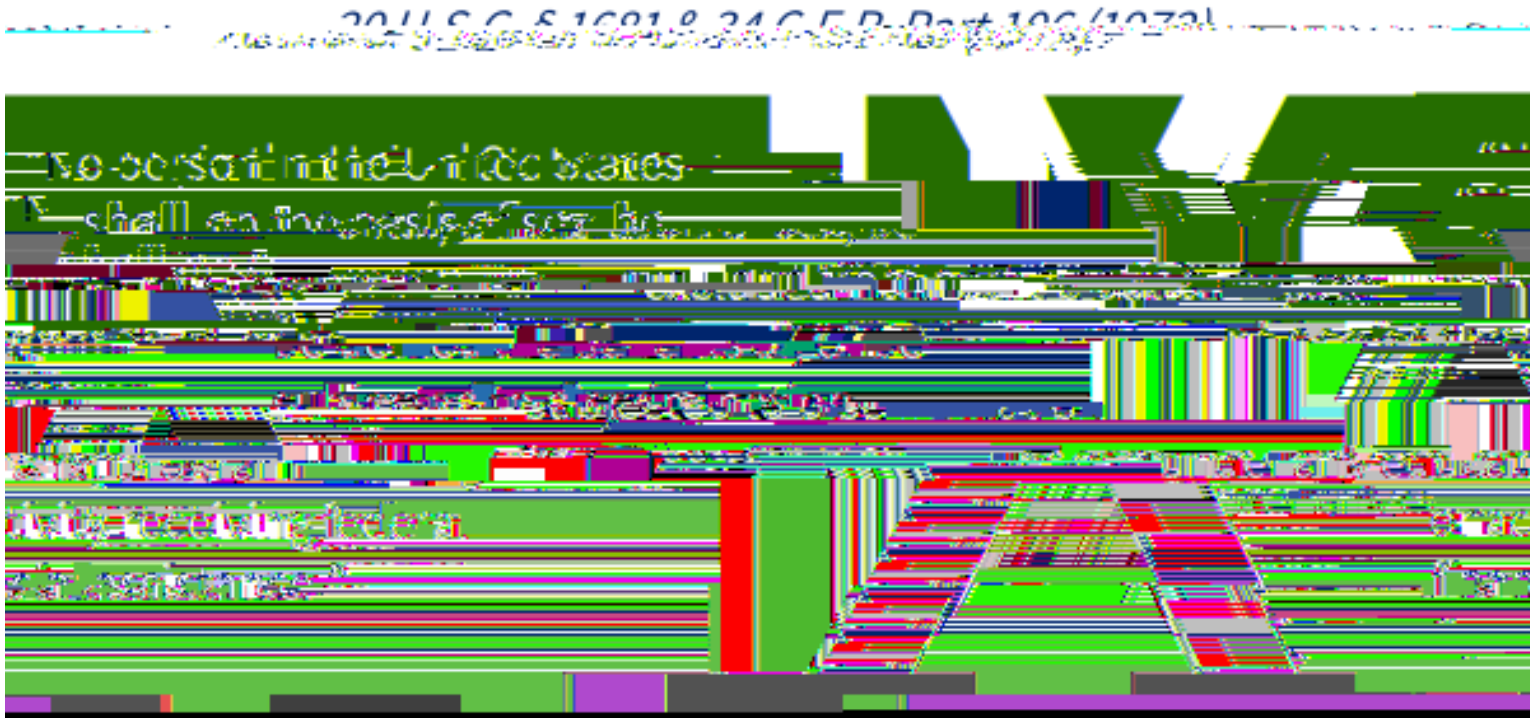
Disparate impact related to treatment and accommodations

Prevalent with pregnant and parenting student accommodations



PREGNANT AND PARENTING STUDENTS

TITLE IX AND PREGNANCY



Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex, including pregnancy and parental status, in educational programs and activities.

A recipient shall not apply any actual or potential parental, family, or marital status which treats students differently on the basis of sex.

34 C.F.R. § 106.40



PREGNANCY DEFINED

Pregnancy and related conditions:

" A Recipient shall) ...

WHO IS COVERED UNDER TITLE IX PREGNANT AND PARENTING STUDENT REGULATIONS?

Students who become pregnant, terminate a pregnancy, or give birth during an academic school year

Title IX regulations apply to pregnant students for as long as deemed medically necessary by the student's health care provider

These protections are not indefinite

WHO IS COVERED UNDER TITLE IX PREGNANT AND PARENTING STUDENT REGULATIONS? (CONT.)

Pregnant and parenting protections under Title IX can apply equally to the other parent of the child

Example: If your school or institution allows time for females to bond with or care for their children, this should apply to males and non-binary or trans* individuals as well.

This does not mean that if a pregnant individual is placed on bed rest and thus must miss classes for a day (which must be excused per Title IX protections), that the other parent would also have an excused absence.

PREGNANCY & TITLE IX

June 2007 "Dear Colleague
Letter"

June 2013 DCL on Pregnant
and Parenting Students

Regulatory Language

Case Discussion

THE OCR, TITLE IX, AND PREGNANCY

Admissions

Athletics

Residence halls

Extracurricular
activities

Health insurance

Academics

Registration

Coursework accommodation
and completion

Employment

Hiring

Benefits and bonuses

Leave and job protection upon
return from leave



THE OCR, TITLE IX, AND PREGNANCY (CONT.)

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Although the pamphlet is focused on secondary education, the DCL states that " legal principles apply to all recipients

PREGNANCY & TITLE IX

June 25, 2013 DCL on pregnancy and parenting students:

Educators must ensure pregnant and parenting students are not discriminated against

Educators must ensure that pregnant and parenting students are fully supported in preparation for graduation and careers

Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Physician Certification

" A Recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the

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" Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions."



PREGNANCY & TITLE IX: OCR GUIDANCE

" Schools cannot require a pregnant student to produce

o , Schools cannot require a pregnant student to produce a doctor's note in activities, including interscholastic sports, unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor." (34 C.F.R. § 106.40)

" That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; schools should not presume that a pregnant student is unable to attend school or participate in school activities."

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Leave Policies

PREGNANCY & TITLE IX: OCR GUIDANCE

Leave Policies (Cont.)

“When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed.”

“A school may offer the student a

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PREGNANCY & TITLE IX: HARASSMENT PROTECTIONS

Recipients must protect pregnant students from harassment based on sex

This includes harassment because of pregnancy or pregnancy-related conditions

PREGNANCY & TITLE IX:



SALT LAKE COMMUNITY COLLEGE RESOLUTION AGREEMENT (JUNE 2022)

Facts: Faculty repeatedly refused/partially modified attendance reqs for a pregnant student; suggested she drop the class

Allegations/Findings/Takeaways:

Failure to respond promptly/equitably to pregnancy discrimination complaint

Failure to engage in iterative process

Failure to excuse pregnancy-related absences

Document, document, document

Consider request and the discrimination allegation

Consider whether the pregnancy is creating a temporary disability/504 analysis and referral

Make sure website(s) describe the interactive process

ATHLETICS, PREGNANCY, AND TITLE IX

NCAA Guidance

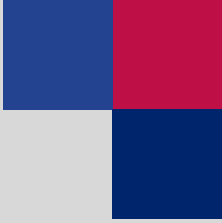
A pregnant student-athlete's physician should make medical decisions regarding sport participation

A student-athlete with a pregnancy-related condition must be provided with the same types of modifications provided to other student-athletes to allow continued team participation

Pregnant student-athletes cannot be harassed due to pregnancy

A student-athlete whose athletic career is interrupted due to a pregnancy-related condition will typically be entitled to a waiver to extend their athletic career

Source: [NCAA, Pregnant and Parenting Student-Athletes](#)



CASE STUDY

Siri

CASE STUDY: SIRI

Siri, a nursing student, is in her third trimester of pregnancy and her final year of nursing school. Siri is completing her clinical hours with the university-affiliated medical school when the Director of the medical school, who also oversees nursing students, phones you to inform you that Siri will need to stop participating in her clinical experience until after she gives birth.

The Director explains that Siri will have to lift patients, stand for long hours, and oftentimes miss a meal during a shift--all of which pose risks to her and her unborn baby and put the medical school and the program at liability risk.

SPECIAL TOPICS

Nursing rooms, mothers'
lounges, etc.

Residence halls

Labs, chemicals, exposure to
diseases, etc.

Cohort programs

Licensure requirements

Online learning/homebound
instruction

Childcare

Not required under Title IX, but an inclusive practice

Having a dedicated space will contribute to a more inclusive campus/school environment for students, employees, and guests

Idea: If you have a women's resource center, create a private space by placing a privacy barrier for nursing mothers

Idea: Rotate usage of additional spaces

Idea: Rent a lactation pod/suite and place in a heavy traffic building for easy access

RESIDENCE HALLS

Not required to change occupancy policies for any residence hall on your campus

Upon birth of child, Recipient can move the student to housing more appropriate for parenting students, if applicable

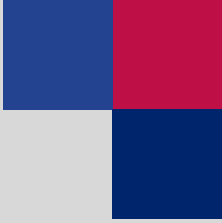
Not required to pay for housing of parenting student if institution does not offer family housing

Pregnant students are required to have equal access to housing and cannot be discriminated against, regarding housing, during their pregnancy

Example: A student with a roommate becomes pregnant. Pregnant student develops morning sickness, which causes vomiting often. The roommate wants the school to move the pregnant student to another room because of the vomit.







CASE STUDY

Sasha

CASE STUDY DISCUSSION: SASHA

Rehearsals take place one day per week for six hours each session. Missing one rehearsal is the equivalent of missing three weeks of course material.

Sasha's three absences have significantly impacted the others involved in the productions, including other students not having the ability to rehearse scenes with her, which has in turn decreased their total number of rehearsal hours.

Sasha tells you that she has been rehearsing during the weekends with her scene partners and knows her lines

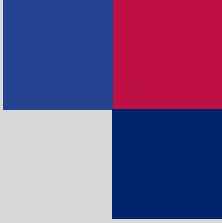


CHILDCARE

Childcare is not considered “medically necessary” under Title IX

Students can still be held to regular standards set forth for all students (i.e., attendance)

If teachers/faculty provide latitude for parenting students as it relates to childcare, they must provide latitude



MINORS AND TITLE IX

Minors on Campus

Operative Questions

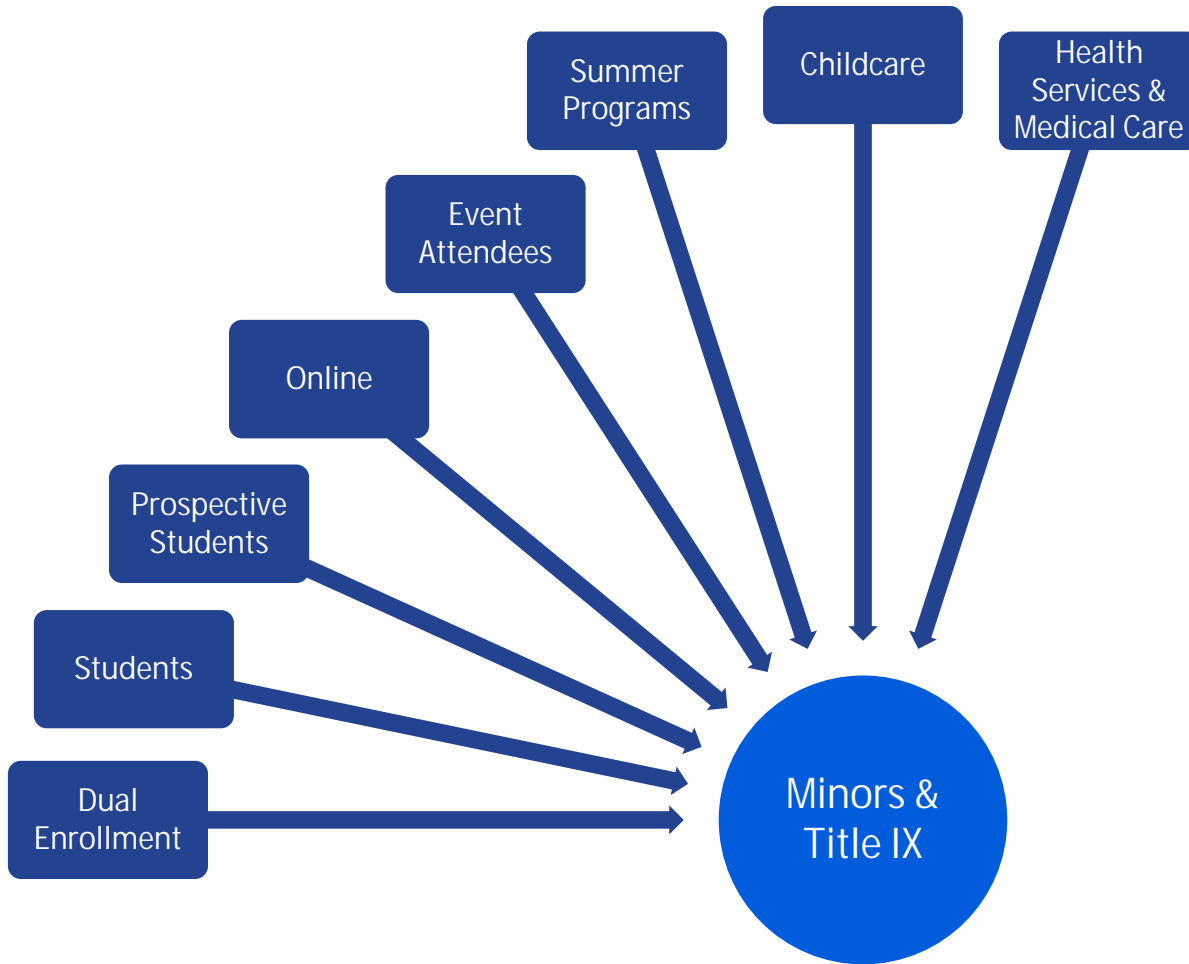
Sample Policy

Dual Enrollment

Abuse Prevention

More Concerns

MINORS AND TITLE IX



MINORS AND TITLE IX (CONT.)

Minors as students

K-12: Nearly all elementary and secondary education students

Higher Education: Students under the age of 18 may enroll full- or part-time in college. When they do, FERPA rights shift from their parents/guardians to them, and privacy protections attach to their education records.

When are they your "students?"

Dual enrollment?

Summer break?

K-12 school on college campus?

Continuing education?

Recruits?

On-campus childcare facilities?

MINORS AND TITLE IX: SOME OPERATIVE QUESTIONS

K-12

Range of ages is of key importance

Whose student are they between elementary, middle, and high school?

Who is responsible for them?

Who is training those responsible?

MINORS AND TITLE IX: SOME OPERATIVE QUESTIONS

Higher Education

How many minors are on your campus each day?

Who knows they are there?

Who knows whe

CHILDREN IN THE CLASSROOM

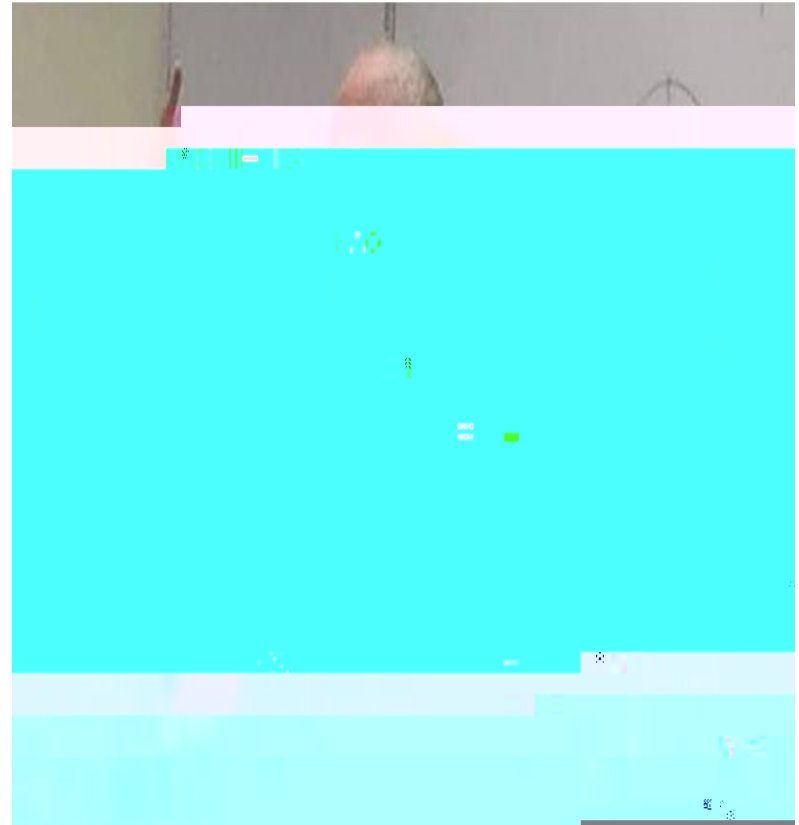
Not required

Not encouraged

Think of equal access to education more broadly

Are you potentially impacting other students' ability to learn?

Not a matter of having a more inclusive campus/school



DUAL ENROLLMENT STUDENTS

Effective coordination between the Title IX Coordinator at the college/university AND the District Title IX Coordinator

What supportive measures are needed in each setting (if any)?

Who has jurisdiction?

- Personal jurisdiction

- Covered programs

- Geographic jurisdiction

- Subject matter jurisdiction

Who should investigate?

Any mandated state reporting required?

Note: Higher Ed FERPA rights belong to the student

MINORS AND TITLE IX: CAMPS AND OTHER PROGRAMS



Not Ours

- Run by a different entity
- They hire the staff
- We only rent them space

Kind of Ours

- The money comes through a shell or through the school
- The employees are our students or temporary hires
- May have our name on it



MINORS AND TITLE IX

Additional policy considerations (Cont.):

Facility usage policies

e.g.: gyms, cafeteria, recreation center, overnight visitation, conference facilities, athletic facilities, event facilities, corridors and classrooms during evening/weekend events (K-12), etc.

Communication and interaction with parents/guardians

Communication and interaction with minors – who will have it?

MINORS AND TITLE IX: SAMPLE POLICY

Abuse involving minors – model policy language (higher education):

In addition to having students who are minors enrolled, [Recipient] hosts minors as guests and as campers. [State] law narrowly imposes duties on mental health professionals, counselors, clergy, and law enforcement to report certain crimes involving minors, and abuse, to appropriate officials. [Recipient]'s protocol is that all employees will report all suspected child abuse, sexual abuse of minors, and criminal acts by minors to [the Security Office] without delay. Clery Act reporting of offenses for statistical purposes occurs whether victims are minors or adults.

MINORS AND TITLE IX: ABUSE PREVENTION

Prevention and Title IX 479.9 Title IX 1997 Title IX PREVENTION





INTRODUCTION TO TITLE IX AND ATHLETICS

Overview of Title IX Requirements

TITLE IX REQUIREMENTS & OVERSIGHT FOR ATHLETICS

Title IX compliance requirements:

Effective accommodation of interests and abilities

Financial assistance proportionality

Treatment of student

TITLE IX APPLICATION TO ATHLETICS

Title IX applies to:

- Intercollegiate athletics

- Interscholastic athletics

- Intramurals

- Club teams/sports

- eSports

The Three-Part Test and the 13 program components are typically not as problematic for Intramurals and Clubs because those programs are typically participant-initiated and benefits provided by the institution are far fewer

OVERSIGHT OF ATHLETICS

GENDER EQUITY: THREE-PART TEST

Effective accommodation of interests and abilities:

Part 1: Opportunities for males and females substantially proportionate to their respective enrollments; OR

Part 2: Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR

Part 3: Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program



CURRENT TITLE IX REGULATION - 106.41(B)

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a

PROPOSED TITLE IX REGULATION

106.41(B)(2)

If a recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level:

- (i) be substantially related to the achievement of an important educational objective, and
- (ii) minimize the harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.





SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION

Terminology

Recent Case Law and Guidance

Common Concerns and Current
Challenges

Pronouns and Chosen Names

Athletics

Activities and Facilities

TERMINOLOGY

Sex: References chromosomes, hormones, reproductive organs, and genitalia

Gender: Refers to the attitudes, feelings, and behaviors that a given culture associates with biological sex

Gender Identity: Internal sense of gender

Gender Expression: Outward expression of gender, often through clothing, behavior, posture, mannerisms, speech patterns, and activities

Sexual Orientation: Attracted to sexually or romantically, on a continuum (e.g., gay, lesbian, bisexual, heterosexual, asexual, and pansexual)

TERMINOLOGY (CONT.)

Nonbinary: A term used to describe individuals who may experience a gender identity that is neither exclusively woman or man or is in between or beyond both genders

Intersex: Born with genitalia, reproductive systems, and/or sex chromosomes of both males and females

Heterosexual: Attracted to people of a gender other than their own

Asexual: Minimal or no sexual attraction to others

Bisexual: Attracted to people of the same as well as other genders

TERMINOLOGY (CONT.)

Pansexual: Attracted to people regardless of gender

Gay:

ADDITIONAL TOPICS

f YoE, μtÅ ¥E² to³ Eμ EÄo³ Å¥Eμ³

Social

Medical

Legal

Pronoun Usage

They/them/theirs

She/her/hers

He/him/his

Other non-binary options

RECENT CASE LAW AND GUIDANCE (CONT.)

June 2021: Department of Education issues "Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*"

"A school's policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm."

July 2021: OCR issues Q&A on Title IX Regulations

August 2021: OCR issues Back-to-School Message for America's Transgender Students

October 2021: OCR issues *Supporting Intersex Students: A Resource for Students, Families, and Educators*

July 2022: OCR issues revised Q&A on Title IX Regulations

TITLE IX & TRANSGENDER INDIVIDUALS

Common Concerns and Current Challenges

- State-based legislation

- Political changes

- Conflict between Title VII (EEOC) and Title IX (OCR)

- Possible federal legislation

- Discomfort and the claim of reverse discrimination

- Educating institutional communities and constituencies

- Religious concerns

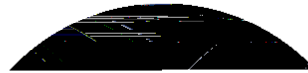
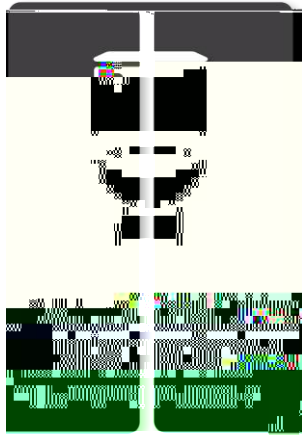
 - Religious schools, club or group membership and/or leadership, sharing of restrooms, etc.



ACTIVITIES AND FACILITIES

Where sex-segregated activities and facilities are provided, transgender individuals should be allowed to both participate and access facilities consistent with their gender identity

ACTIVITIES AND FACILITIES (CONT.)



DCL ON TRANSGENDER STUDENTS (RESCINDED)

Athletics

Beware of requirements that rely upon overly broad generalizations or stereotypes

Discomfort with transgender students

NCAA, NJCAA, and other organizations have specific policies regarding participation

OCR has rescinded Trump-era enforcement letters that stated that students should compete according to biological sex

Single-Sex Classes

Transgender students are to be allowed to participate consistent with their gender identity

DCL ON TRANSGENDER STUDENTS (RESCINDED) (CONT.)

Housing and Overnight Accommodations

Institutions must allow transgender students access to housing consistent with their gender identity

Institutions may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students

Institutions can choose to honor a student's voluntary request for single-occupancy accommodations

Same-sex only guest policies may be discriminatory on the basis of sexual orientation

Consider summer camps, etc.



TECHNOLOGICAL ABUSE AND CYBER HARASSMENT

VAWA 2022: TECHNOLOGICAL ABUSE

OVERLAP BETWEEN TECHNOLOGICAL ABUSE AND SEXUAL EXPLOITATION

Incidents of technological abuse may fall under your institution's sexual exploitation policy

(e.g. "I was sexually exploited by a peer through the use of technology" - Title IX sexual harassment)

Occurs when one person takes non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute one of the other sexual harassment offenses.

[§ V D G " & B " & / § § § E V SEXUAL EXPLOITATION (CONT.)

Examples of technology-facilitated sexual exploitation:

Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography

ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION (CONT.)

Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)

Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity

Knowingly soliciting a minor for sexual activity

Behaviors usually emerge within the context of an intimate relationship or as an element of Dating Violence, Domestic Violence, or and Stalking

JURISDICTION CONSIDERATIONS

Mandatory Jurisdiction = We must respond by law

The *Davis* standard - Title IX applies, and jurisdiction is required, when the Recipient has:

- Control over the harasser (Respondent) AND control over the context of the harassment
- And the Complainant is experiencing a discriminatory effect within an educational program or activity

Discretionary Jurisdiction = We may respond by policy (if we choose)

The Recipient may still take discretionary jurisdiction over incidents off campus or on non-school property, but under other policies, not Title IX



TAKEAWAYS

Substantially disruptive online conduct could still violate and be addressed under:

- Institutional harassment/discrimination policies

- Student Handbook/conduct policies

- Technology/Acceptable Use policies

- Employee Handbook/conduct policies

- Professionalism standards

Institution should still take steps to:

- Provide support and resources to the Complainant to address any "downstream effects"



INTRODUCTION TO TRAUMA-INFORMED PRACTICES

ATIXA Position Statement

What is Trauma?

Impact of Trauma

Victim Responses to Trauma

Trauma-Informed Practices

ATIXA POSITION STATEMENT (CONT.)

However, the “Neurobiology of Trauma” should not significantly influence the way that colleges and schools evaluate evidence

We can be trauma-informed in our investigations without allowing trauma to unduly influence our interpretation of evidence

Wise administrators are vetting their training materials for potential indications of bias to ensure the best possible defense to a claim of a biased resolution process

Not suggesting that Title IX professionals forego trauma training, but that the trainings must be balanced, or, better yet, obtained from a balanced source

WHAT IS TRAUMA?

Exposure to an event or events that creates a real or perceived threat to life, safety, or sense of well being and bodily integrity.

May result from:

War

Natural Disasters

Sexual Violence

Relationship Violence

Stalking



VICTIM RESPONSE TO TRAUMA

May be impacted by:

Personality

Coping strategies

Available support systems and resources

General resilience

Past history of traumatic experiences

Cultural differences in the perception and expression of trauma

Normalization/adaptation

TRAUMA-INFORMED PRACTICES

Trauma-Informed Practices assume that an individual is more likely than not to have a history of trauma.

On an organizational or systemic level, Trauma-Informed Practices change organizational culture to emphasize respecting and appropriately responding to the effects of trauma at all levels.

The intention of Trauma-Informed Practice is to provide all persons with support services in a way that is accessible and appropriate to those who may have experienced trauma

This is similar to how the Universal Design framework provides all persons with physical spaces and learning systems that are accessible to those who may have a disability

Source: <http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care.html>

TRAUMA-INFORMED PRACTICES

A Trauma-Informed approach also considers and modifies policies, procedures and treatment strategies from the top-down in order to ensure they are not likely to mirror the common characteristics of traumatic experiences.

Source: <http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care.html>

PRINCIPLES OF TRAUMA-INFORMED PRACTICE

Safety

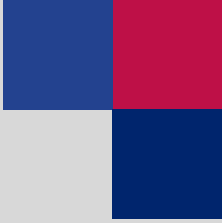
- Employees and the people they serve feel physically and psychologically safe
- Example: Creating areas that are calm and comfortable

Trustworthiness & Transparency

- Operations and decisions are conducted with transparency and the goal of building and maintaining trust of the institutional community
- Example: Providing clear and consistent information

PRINCIPLES OF TRAUMA-INFORMED PRACTICE (CONT.)





FINAL PLANNING

Title IX Compliance Checklist

VAWA Compliance Checklist

TIX REGULATIONS COMPLIANCE CHECKLIST

Notifications of Recipient's Title IX Coordinator

Notifications that Recipient does not discriminate on the basis of sex in its education programs and activities

Policy includes 34 C.F.R. § 106.30 definitions

Recipient's response to sexual harassment in accordance with 34 C.F.R. § 106.44

Adopted grievance procedures in compliance with 34 C.F.R. § 106.45

Including and defining retaliation in accordance with 34 C.F.R. § 106.71

Adhering to confidentiality when possible

VAWA COMPLIANCE CHECKLIST

Maintain incident statistics for dating violence, domestic violence, sexual assault, and stalking

Revised categories of bias for Clery Act hate crime reporting

Required description of disciplinary proceedings for dating and domestic violence, sexual assault, and stalking

Description of programs in ASR

Listing of all available sanctions

Description of protective measures

Posting of Title IX Coordinator contact information

PREVENTION AND PROGRAMMING COMPLIANCE CHECKLIST

Provide incoming students and new employees with programming and document it within the ASR

Provide ongoing prevention and awareness campaigns for students and employees and describe these in the ASR

Have clear definition for:

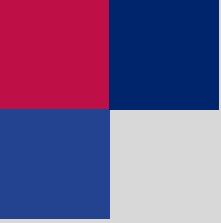
- Awareness programs

- Bystander intervention

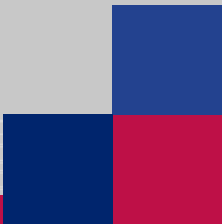
- Ongoing prevention and awareness campaigns

- Primary prevention programs

- Risk reduction



Questions?



Thank's for joining us today.

ATIXA

