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NACUA Online Course
Title IX Coordinator Training

Module 1: Title IX Overview and Application

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Diagram: A Venn diagram of three overlapping circles labeled Legislative, Judicial, and Executive, representing the three branches of government involved in shaping and enforcing Title IX.

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Legislation: Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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Administrative: Title IX Regulations

- 1975 regulations
- 1980 OCR tasked with implementing the regulations
- 1997 OCR policy guidance
- 2001 OCR reaffirmed obligations of schools to protect against sexual harassment
- 2003-2010 OCR offers additional and more targeted guidance related to sexual assault.
- 2011 DCL emphasized schools' obligations to address sexual harassment and sexual violence against students
- 2014 OCR Q & A further clarified schools' obligations & DOE issued final regulations on implementation of Campus SaVE Act, amending the Clery Act regulations.
- 2017 OCR withdrew 2011 DCL and 2014 Q&A
- 2018 NPRM
- 2020 Regulations
- 2022 NPRM
- 2024 Regulations
- 2025 DCL declared that 2020 Regulations govern and 2024 regulations are vacated

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Judicial: Recognition of Sexual Harassment

- *Barnes v. Costle* (1977)

- *Meritor Savings Bank v. Vinson* (1986)
- *Harris v. Forklift Systems* (1993)
- *Gebser v. Lago Vista Ind. Sch.* (1998)
- *Davis v. Monroe Cty.* (1999)

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When Does Title IX Apply?

- Program or Activity Receiving Federal Financial Assistance
  - § 106.2 Definitions: *Federal Financial Assistance*
  - Grants, loans, scholarships, provision of services of Federal personnel, use of Federal property, contract for provision of assistance by Federal government
  - Applies across institution if any part of the institution receives Federal funds
  - Exemptions
    - Religious
  - Applies even if other laws also apply
    - Title VII
    - State Laws

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What is the scope of the application of Title IX?

"… be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity"

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What is the scope of our education program and activities?

- In the United States
- Off Campus
- Student Organizations
- On Campus

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Factors for whether conduct is within scope of school's program or activities

Disparate Treatment Exemptions

- Membership practices of social fraternities, sororities, or voluntary youth organizations
- Maintenance of single sex living facilities

TIX Sex-Based Harassment

§ 106.11 expressly requires schools to address a hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the school's education program or activity or outside the United States.

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Factors for whether conduct is within scope of school's program or activities

- Building owned or controlled by recognized student organization
- A teacher's sexual harassment of a student is likely to constitute sexual harassment.
- Substantial control over both respondent and context

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Factors for whether conduct is within scope of school's program or activities

Conduct occurring in a building owned or controlled by a student organization that is officially recognized by a post-secondary institution

- School exerts oversight over the student organization
- School has authority to discipline the student organization
- Does not prohibit single sex clubs and activities, social fraternities/sororities, single-sex affinity groups, or single sex dormitories that are otherwise permissible under TIX

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Factors for whether conduct is within scope of school's program or activities

Conduct subject to a school's disciplinary authority

- Look at Student Conduct Codes
  - If other off campus interactions are covered, must apply to sexual harassment
- Look at employment policies and precedent

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Factors for whether conduct is within scope of school's program or activities

Does school have substantial control over the context

- Perpetrator's status as a teacher is relevant
  - A teacher's sexual harassment of a student is likely to constitute sexual harassment in the program even if the harassment occurs off campus and outside a school activity
- Nexus between out-of-school conduct and the school
  - Possible future encounters between survivor and alleged perpetrators

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Conduct Outside United States

- TIX does not have extraterritorial application. TIX does not apply to sex discrimination that occurs outside of the U.S.
- A recipient is not independently obligated to respond to an incident of sex discrimination that occurs in another country.
- Must still address sex-based hostile environment in program or activity in U.S., even when some conduct alleged to be contributing to the hostile environment occurred outside the U.S.
- Other policies, such as codes of conduct might apply.
  - Clery Act applies even outside of U.S.
  - Title VII applies to U.S. citizens working for a U.S. corporation abroad.

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On the Basis of Sex

- No definition of "sex" or "on the basis of sex."
- 2020 commentary to regs acknowledged that sexual harassment impacted many demographic groups "based on sex, race and the intersection of sex and race (as well as other characteristics such as disability status, sexual orientation, and gender identity).
- Feb. 4, 2025 DCL stated that DOE & OCR must enforce TIX consistent with EO stating that there are "two sexes, male and female."

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Bostock v. Clayton County (2020)

"…in Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin. Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questions in members of a different sex. Sex plays a necessary and undistinguishable role in the decision, exactly what Title VII forbids."

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What are procedural definitions that apply to Title IX?

- Complainant
- Respondent
- Student
- Relevant
- Consent
- Remedies & Disciplinary Sanctions

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Definition: Complainant

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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Definition: Respondent

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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Definition: Student with a Disability

2020 Regs

- No definition

2024 Regs

- § 106.2 A student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended.
- § 106.8(e) TIX Coordinator may as appropriate with the individual or office that recipient has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act.

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Definition: Relevant

- No definition
- Questions and evidence about complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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Definition: Consent

- Not required to adopt a particular definition of consent with respect to sexual assault.

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Definition: Remedies

- No Definitions

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Definitions: Supportive Measures

- Non-disciplinary, non-punitive
- Individualized
- Without fee or charge
- No unreasonable burden to other party
- Restore or preserve equal access to program or activity
- Provide at any point during process

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Role of the Title IX Coordinator

- Designate at least one employee with ultimate oversight to coordinate efforts to comply with TIX requirements
- Adopt, disseminate, provide notice, implement non-discrimination policy and procedures
- Easy-to-Find contact information for reporting
- Prominent, wide-spread, effective and comprehensive
- Coordinate training requirements
- Record keeping

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Final Reflections

- TIX continues to play a critical role for ensuring educational opportunities at our institutions
- It is incredibly hard work
- Building relationships and trust across campus is important
- Being visible/prominent is important

- Process is your friend
- Recordkeeping is important
- Reporting is good
- Remaining neutral, yet caring is important

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