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NACUA Online Course
Title IX Coordinator Training

Module 2: Prohibited Conduct

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Submodules

- 1. Sex Discrimination
- 2. Disparate Treatment
- 3. Sexual Harassment
- 4. Retaliation
- 5. Other Laws

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Submodule 1

Title IX Sex-Based Discrimination

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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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Sex-Based Discrimination

Disparate Treatment **Sexual Harassment**

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Submodule 2

Disparate Treatment

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Disparate Treatment

- Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- Deny any person any such aid, benefit, or service;
- Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
- Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity

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Disparate Treatment Applications

- Education Programs and Activities
  - Admissions
  - Employment
  - Housing
  - Access to classes
  - Financial assistance
  - Scholarship opportunities
  - Health insurance benefits
  - Athletics

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Disparate Treatment Exceptions

- Religious Organizations
- Military and Marine Educational Institutions
- Fraternities and Sororities
- Voluntary Youth Service Organizations

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Transgender Individuals

- February 4, 2025 Dear Colleague Letter
- EO 14168 "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"
- EO 14201 "Keeping Men Out of Women’s Sports"
- "two sexes, male and female"
- "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality"
- Determination of sex based on birth certificate

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Submodule 3

Sexual Harassment

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Sex-Based Harassment

- Quid Pro Quo
- Hostile Environment
- Specific Offenses

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Quid Pro Quo Harassment

A school employee conditioning the provision of a school-related aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

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Hostile Environment Harassment

- Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity.
- Such conduct can be carried out by school staff, a student, or another person.
- It can occur in-person or online, including through email, texts or messages, apps, or other technologies.

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Hostile Environment: Subjective & Objective Analysis

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Hostile Environment Sexual Harassment

Not Harassment

- One stray remark
- One offensive particular expression, perceived by some persons, standing alone
- Statement of one's point of view on an issue of debate, even if other person disagrees strongly

Possible Harassment

- Sex-based conduct, occurring on multiple occasions & so persistent that it limits another student's ability to complete assigned coursework at the student's typical level of performance
- Harassment can be pervasive if it is widespread, or well-known to students and staff
- Look for patterns or practice of harassment, non-trivial, continuous series of events

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Transgender Individuals

- 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)."
- But EO 14168 expressly eliminates transgender status

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Specific Offenses Prohibited

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Single instance of any of these Clery crimes constitutes sexual harassment.

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Sexual Assault

Defined in 20 U.S.C. § 1092(f)(6)(A)(v): an offense classified as a forcible or nonforcible sex offense under the UCR system of the FBI.

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- **A. Rape**- The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **B. Sodomy**- Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **C. Sexual Assault With an Object**- To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
- **D. Fondling** —The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **E. Incest** —Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **F. Statutory Rape** —Sexual intercourse with a person who is under the statutory age of consent.

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Domestic Violence

A felony or misdemeanor crime of violence committed—

- (A) By a current or former spouse or intimate partner of the victim;
- (B) By a person with whom the victim shares a child in common;
- (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- (E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (ii) For the purposes of this definition—
  - (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - (B) Dating violence does not include acts covered under the definition of domestic violence.

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Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.
- (ii) For the purposes of this definition—
  - (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
  - (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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Submodule 4

Retaliation

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Retaliation

- No School or other person may:
  - Intimidate, threaten, coerce, or discriminate
- Against any individual
  - For the purpose of interfering with any right or privilege secured by TIX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.
- May not discipline an individual for conduct that does not involve sex discrimination or sexual harassment for the purpose of interfering with any right or privilege secured by TIX or these regulations.

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Confidentiality

- Must keep confidential name of:
  - anyone who has made a complaint or report of sex discrimination
  - Alleged perpetrator of sex discrimination, including respondent
  - Witnesses
- Except as:
  - Permitted by FERPA
  - Required by law
  - Needed to carry out investigation, hearing, judicial proceeding

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Retaliation Complaints

File according to grievance procedures for sex discrimination

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Submodule 5

Additional Sex-Based Discrimination Prohibitions

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Other Laws

- State Laws
- Title VII
- FMLA
- Pregnant Workers Fairness Act
- Equal Pay Act

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Title VII

"…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."

Bostock v. Clayton County (US. S. Ct. 2020)

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End of Module 2

Thank you!

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