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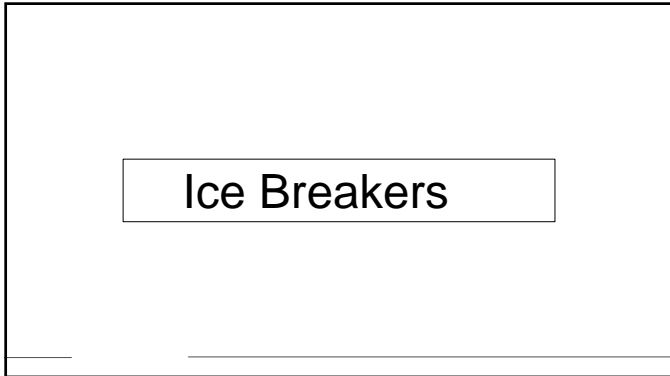
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Take Care


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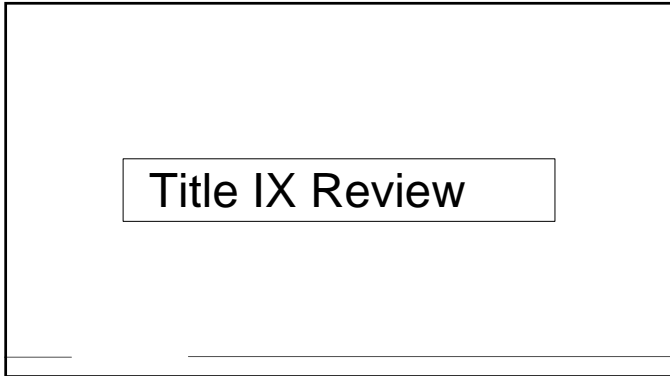
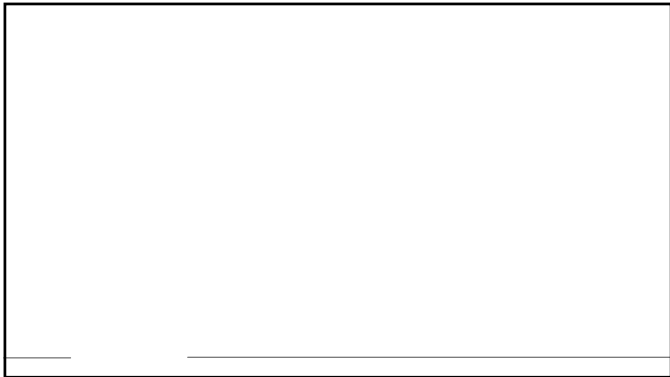
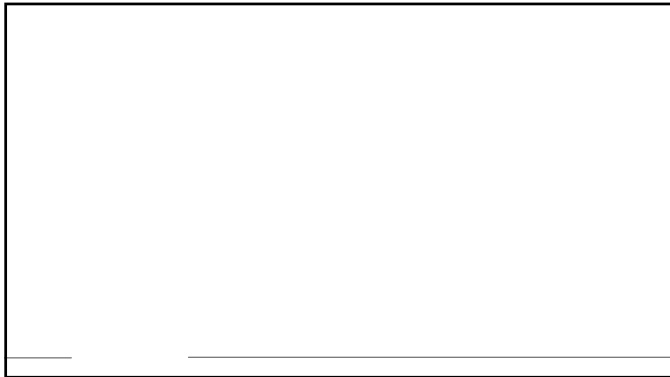
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Option One
Use this QR code

Option Two

- x Go to Pollev.com on any browser
- x Accept or dismiss cookies
- x Enter THLAW411 as the Username
- x Skip when asked to enter your name



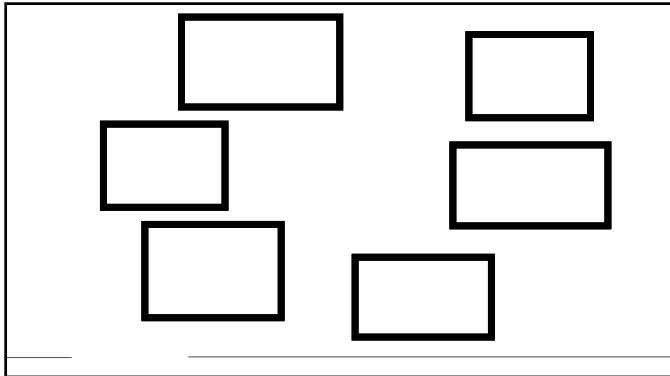
Title IX

No person in the United States shall, on the

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What Complaints Could Fall Under Title IX in My Educational Institution?

Different Treatment Different Impact Accommodations

Sexual Misconduct Sexual Harassment/Bullying

Athletics Equity

Interscholastic Athletic Programs

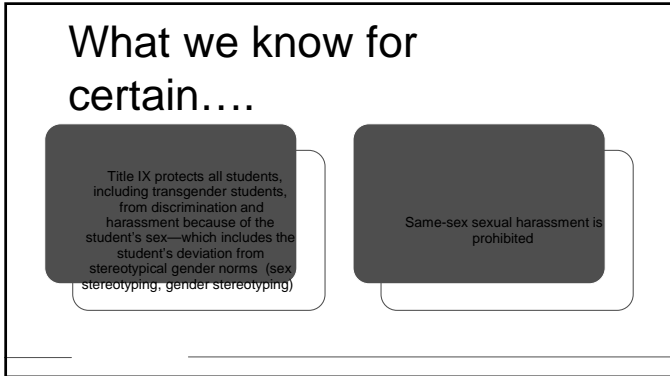
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Sticky Issues – Transgender

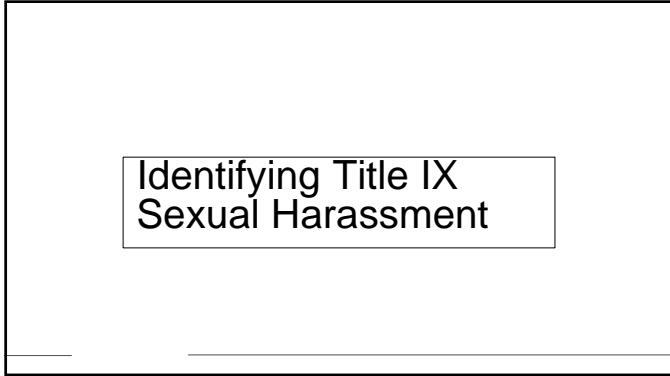
Link to court opinion on transgender students' rights

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Chanda, a student, reports a sexual relationship with Mx. Robin, an "at will" adjunct professor in the math department. Chanda took a course from Mx. Robin during the first semester of freshman year, when Chanda was a minor. The two were first intimate after Chanda was no longer a student in the course but still enrolled as a student. When Mx. Robin broke things off, Chanda looked at the relationship clearly for the first time and fears it

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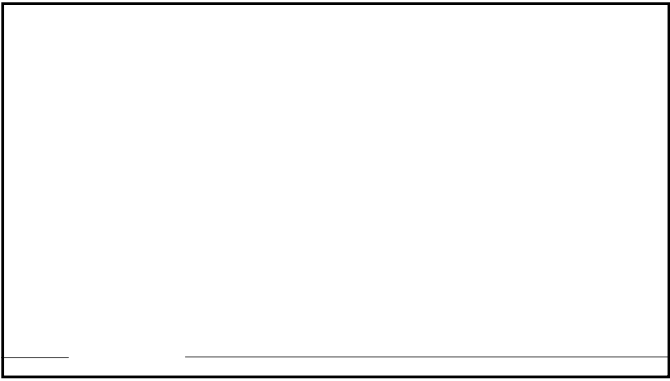
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P/ATP

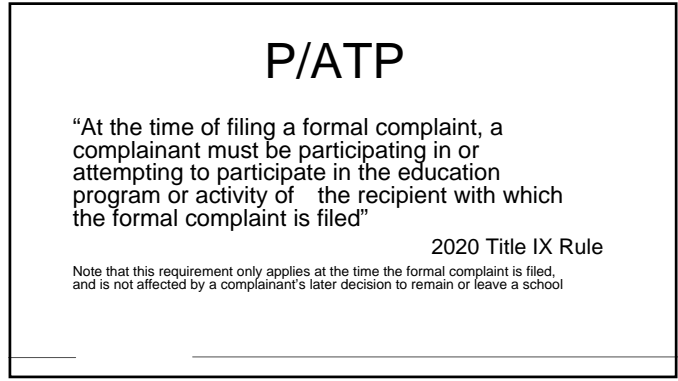
“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed”

2020 Title IX Rule

Note that this requirement only applies at the time the formal complaint is filed, and is not affected by a complainant's later decision to remain or leave a school



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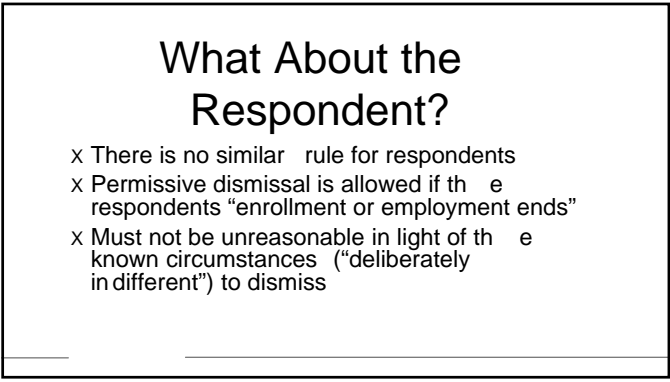
What About the Respondent?

- x There is no similar rule for respondents
- x Permissive dismissal is allowed if the respondents “enrollment or employment ends”
- x Must not be unreasonable in light of the known circumstances (“deliberately in different”) to dismiss

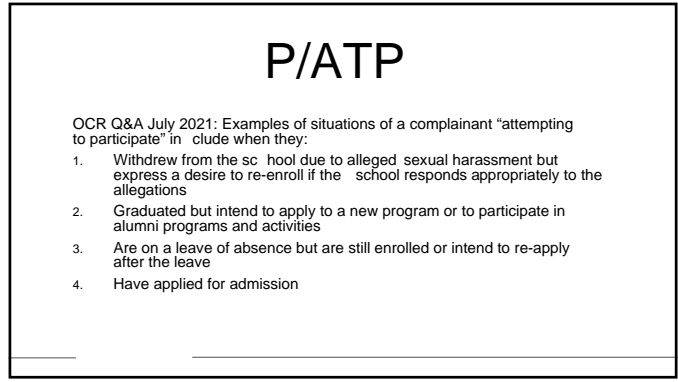
P/ATP

OCR Q&A July 2021: Examples of situations of a complainant “attempting to participate” include when they:

1. Withdrew from the school due to alleged sexual harassment but express a desire to re-enroll if the school responds appropriately to the allegations
2. Graduated but intend to apply to a new program or to participate in alumni programs and activities
3. Are on a leave of absence but are still enrolled or intend to re-apply after the leave
4. Have applied for admission



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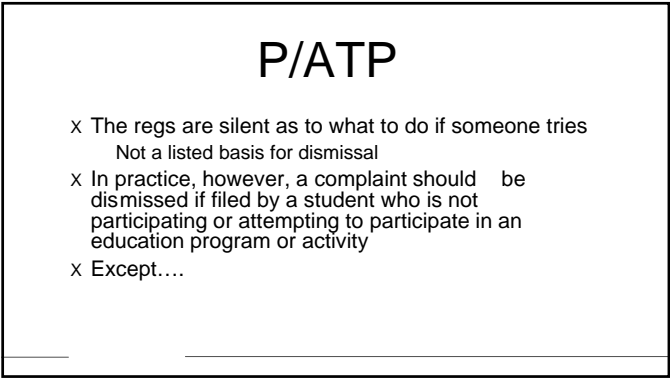
P/ATP

- x The regs are silent as to what to do if someone tries Not a listed basis for dismissal
- x In practice, however, a complaint should be dismissed if filed by a student who is not participating or attempting to participate in an education program or activity
- x Except...

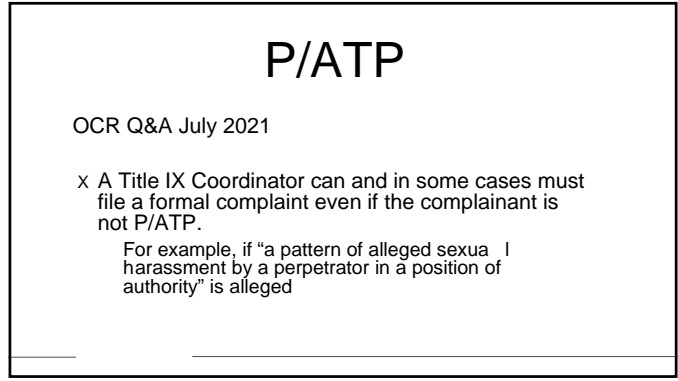
P/ATP

OCR Q&A July 2021

- x A Title IX Coordinator can and in some cases must file a formal complaint even if the complainant is not P/ATP.
 For example, if “a pattern of alleged sexual harassment by a perpetrator in a position of authority” is alleged



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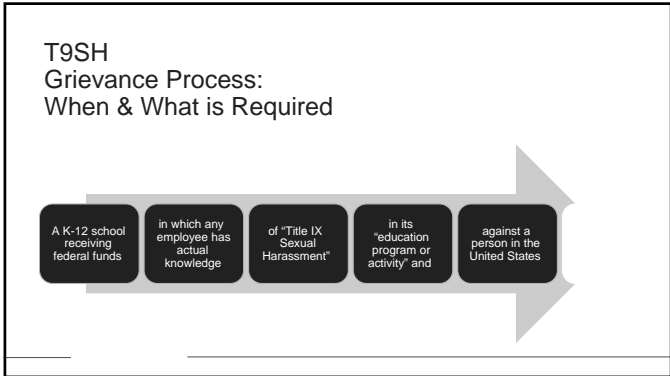
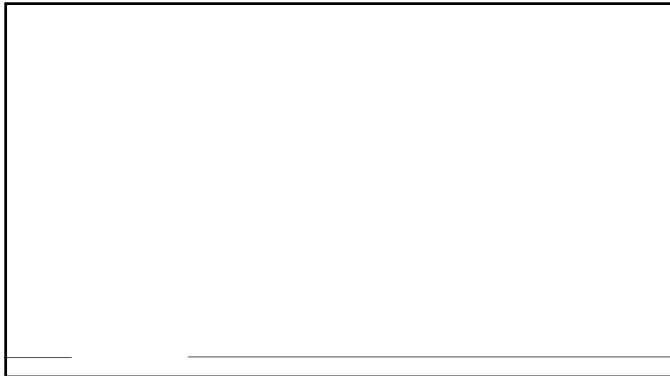
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If It's Not Title IX

~~x Just because conduct is not Title IX Sexual Harassment does not mean you will ignore it; you will just use a different policy/procedure to address it.~~
x Train staff to take a "yes, and" approach to responding to complaints rather than a "no, but" response.

T9SH
Grievance
Process:
When &
What is
Required



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Notice or Knowledge

- x Complaint
- x Report
- x Reference
- x Gossip/Rumor
- x Perceive
(See/Hear/Notice)



REMEMBER

- x Any person may report sex-based discrimination to any OWA, including the Title IX Coordinator
- x Every OWA is required to report any information they know suggesting that sex-based discrimination, including harassment, or retaliation has, is, or may be happening. Failure to do so may lead to disciplinary action.

Test Yourself

A student, Carson, mentions to another student, Frankie, while walking down the hall that a professor is sexually harassing them (clearly SPOO). An OWA overhears.

An anonymous

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Test Yourself

An OWA hears from staff members that a student, Carson, and a TA supervising the student are having a consensual relationship

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Unwelcome?

A student, Carson, reports that other students are constantly making sexual jokes, which Carson said makes them uncomfortable. Carson actively participates in the jokes, makes jokes, laughs at jokes, but says they only did so not to make a scene.

Unwelcome?

Carson reports that Robin forcibly kissed Carson on multiple occasions. Robin asked Carson for a kiss. Carson did not say no. Carson reports looking at Robin uncertainly, however, and not kissing Robin back. When asked for details, Carson said they were too afraid to say no because Robin is very popular and Carson didn't want to be an outcast.

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Based on Sex

- x "Sexual"
- x Based on gender (e.g., stereotypes of women's roles)
- x Based on sexual orientation
- x Based on gender identity

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Based on Sex

The sex/gender, sexual orientation, and gender identity of the parties involved is not determinative

- A boy can harass a boy (even if both are heterosexual)
- A girl can harass a girl (same)
- A cisgender person can harass a cisgender person

**Cisgender ("sis-gender") is a person whose gender identity and expression match the biological sex they were assigned at birth

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Title IX Sexual Harassment Is....

- x Unwelcome conduct
- x
- x That:
 - Is one of the Title IX "Big Five" or
 - Creates a Title IX "Hostile Environment"

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Title IX Sexual Harassment Is....

- x Unwelcome conduct
- x Based on sex
- x

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"Title IX Sexual Harassment"

The Title IX "Big 5" OR Title IX "Hostile Environment"

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"Title IX Sexual Harassment"

OR Title IX "Hostile Environment"

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Title IX “Big 5”

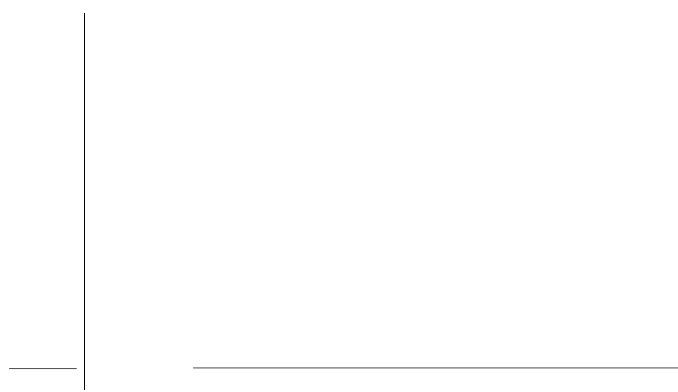
- x Employee Quid Pro Quo
- x Sexual Assault**
- x Domestic Violence**



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Case Law Definitions

- x "Severe" means something more than just juvenile behavior among students, even behavior that is antagonistic, non-consensual, and crass.
 - x Simple acts of teasing and name-calling are not enough, even where these comments target differences in gender.
- Kollaritsch v. Michigan State Univ. Bd. of Trustees, 944 F.3d 613, 620 (6th Cir. 2019), cert. denied, 141 S. Ct. 554, 208 L. Ed. 2d 175 (2020)

Dictionary Definition

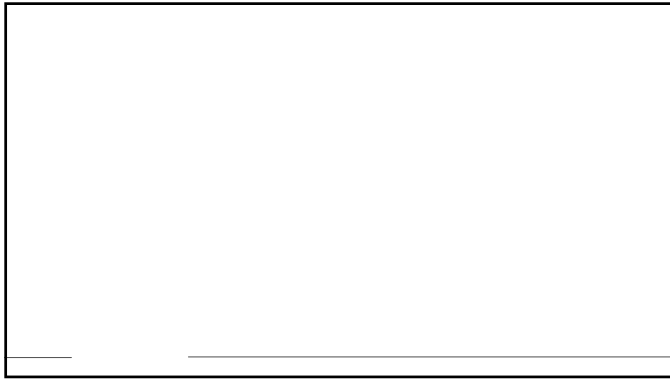
qPervasiver
Spread over a large area, either metaphorically, or in a literal manner.
For instance, rumors can be quite pervasive amongst people. (Black's Law Dictionary)

x "Pervasive" means "systemic" or "widespread." For sexual harassment under Title IX, it also means multiple incidents of

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Effective Denial of Equal Access

- x No concrete injury is required to prove an effective denial of equal access
- x A complainant need not have already suffered a loss of education
- x Does not require that a person's total or entire educational access has been denied

Effective Denial of Equal Access

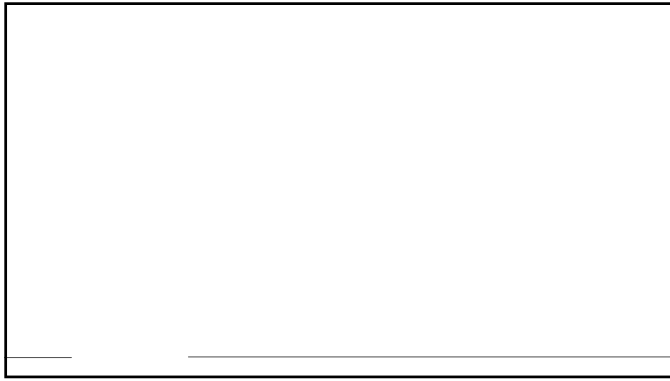
x The key: Title IX officials turning away a complainant by deciding the complainant

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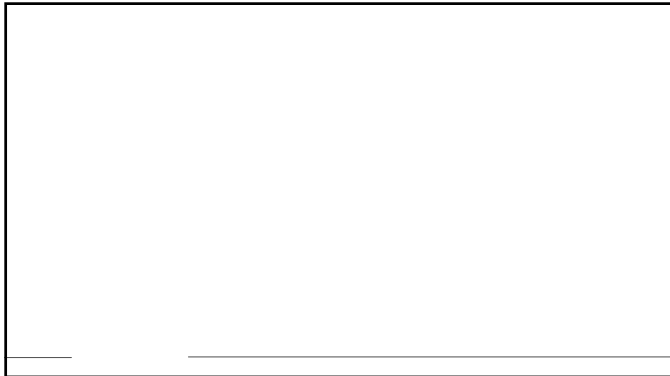


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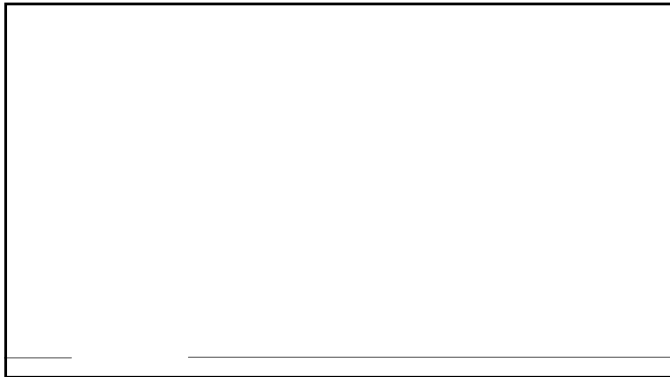
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Title IX Sexual Harassment Is....
x Unwelcome conduct
x Based on sex
x That:
 Is one of the Title IX "Big Five" or
 Creates a Title IX "Hostile Environment"



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Education Program or Activity

The sexual harassment must occur within the school's educational program or activity

Includes situations where conduct occurs as part of the school's "operations"

"Includes locations, events, or circumstances over which the [school] exercised substantial control over both the respondent and the context in which the sexual harassment occurs"

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TEST YOURSELF

Is it in a Program or Activity?

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Test Yourself

Student Robin allegedly sexually assaulted student Carson in the bathroom on campus.

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Blank area for response.

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Test Yourself

Robin allegedly sexually assaulted Carson during free time at the hotel on a trip with an athletics or intramural program.

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Blank area for response.

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Off-Campus Events & Activities

Factors such as whether the school funded,
promoted, or sponsored the event or
circumstance where the alleged harassment

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Two Arguments...

- xThe conduct is severe, but protected by the First Amendment
- xThe conduct is not severe because it is protected by the First Amendment

Tinker and Healy

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Meriwether v. Hartop

- x College professors have academic freedom which gives them more autonomy regarding what they say in the classroom.
- x This was a matter of public concern: Taken in context, his speech 'concerns a struggle over the social control of language in a crucial debate about the nature and foundation, or indeed real existence, of the sexes.'
- x In higher education, the interest in "promoting the efficiency of the public services" the school performs through him not enough to limit his speech.

Meriwether v. Hartop

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Taylor, a student, reports that another student, Charlie, was sexually harassed by a faculty member, Mx. Rowan. Taylor also says another student, Casey, was in

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ENARIO • AGCIN

Taylor, a student, reports that another student, Charlie, was sexually harassed by a faculty member, Mx. Rowan. Taylor also says another student, Casey, was in a similar situation the previous year. Charlie and Casey confirm that the conduct occurred, but do not want to file a formal complaint.

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Rory is a teaching assistant. Chris, a student in the class, and Rory, meet through the class and hit it off; they share phone numbers and begin texting. The texts are playful and flirtatious, even

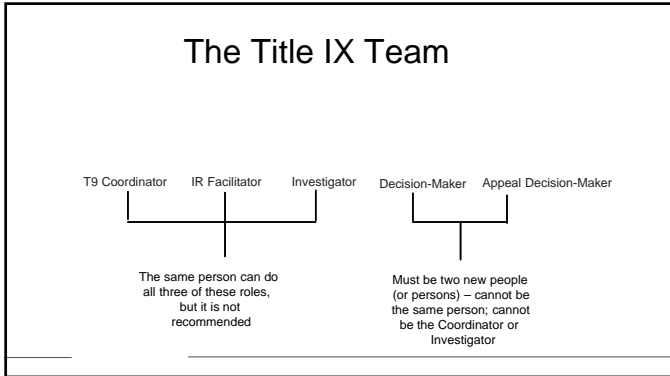


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Step 3: Notice of Allegations
Step 4: Consider if dismissal is required
or warranted
Step 5: Informal Resolution (in some
cases)

Step 6: Investigation
Step 7: Hearing
Step 8: Appeal

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Step #2: Emergency Removal

WHO: A student, employee, or any other Respondent
WHAT: Removal from a program or activity on an emergency basis (class, activity, campus generally, work, etc.)
WHEN: After an individualized safety and risk assessment and determination that an immediate threat to the of any student or other individual arises from the allegations of sexual harassment justifying removal (mental health or safety is not enough)
AFTER: Must provide the respondent with notice and an opportunity to challenge the decision the removal

Step #2 Administrative Leave

WHO: An employee
WHAT: Paid or unpaid administrative removal of an employee from an assignment or position on an emergency basis (usually a removal from work generally)
WHEN: "During the pendency of a grievance process that complies with § 106.45"
LIMIT: State law, board policies,

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Only move to Step 3
if you have a Formal
Complaint

But support, support,
support

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Step #3: Notice of Allegations

Upon receipt of a formal complaint an institution must provide each known party written notice of:

- The institution's grievance process;
- The allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview ;
- A presumption of non-responsibility;
- The right to inspect and review evidence;
- The right to have an advisor during the process; and
- Any provision in the institution's code of conduct that prohibits knowingly making false statements or submitting false information during the grievance process

All the Details

- x The Notice of Allegations (NOA) must include:
 - The identities of the parties involved in the incident, if known
 - The conduct allegedly constituting sexual harassment
 - The date and location of the alleged incident, if known
- x See the T&H Guidebook

No More Confidentiality

- x Once a formal complaint has been filed or signed, the institution must share the Complainant's name with the Respondent ()
- x Compare to the status before a for Tc 6945 must m76 sc5 0.376 sc n a(h)229(an op<61.5(th)6.3 0 Td op<61.5(o)-0.50.86 -14 Tm >484 76.38 3(nt)72 -0.9)-6.6(a(h)229(an op<61.5(th)6.

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Written Notice and Appeal—
Dismissals

- x If the institution dismisses the complaint or allegations in the complaint, it must promptly send written notice of the dismissal and the reason for the dismissal to all parties
- x Any party can appeal the dismissal decision

Step 3:

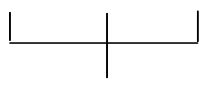
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The Title IX Team



The same person can do
all three of these roles,
but it is not
recommended

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Relevant Evidence Includes

“Inculpatory Evidence”

Evidence that makes it
that a disputed fact or issue is true

“Exculpatory Evidence”

Evidence that makes it
that a disputed fact or issue is true

Never relevant without consent

Evidence subject to legal privilege

Evidence related to a complainant's past sexual history unless:

1. The evidence is offered to prove someone other than the respondent committed the alleged sexual harassment
2. The evidence relates to the sexual behavior between the complainant and respondent and is offered to prove consent

A party's records made or maintained by a medical professional or paraprofessional made and maintained in connection with the provision of treatment of the party

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Written Decision Requirements

- x Decision must include a statement of, and rationale for, the result as to each allegation, including:
 - Determination regarding responsibility
 - Any disciplinary sanctions imposed on the respondent
 - Whether remedies designed to rest ore or preserve equal access to educational program will be provided by the school to the complainant
- x Must explain appeal process and permissible grounds for each party to appeal
- x Must provide the written determination to the parties simultaneously

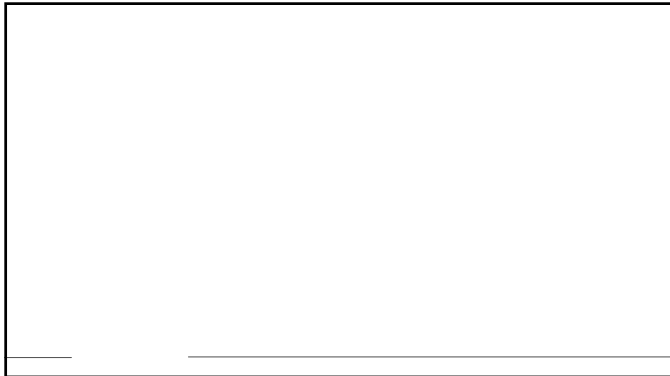
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Police Results as Evidence?

- x Police evidence may be useful for fact-gathering
- x But the standards for and purposes of criminal investigations are different from school investigations
- x Police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX

OCR 2011 DCL and 2020 TITLE IX REGS

When the Police Call

- x Document !
- Ask police to put request for delay in writing
- Reduce verbal (e.g., telephone) conversations in writing
- Best practice is to respond with summary/If my

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Scenario 10(a):

Chen reports that on the occasion in question, Ricki told Chen that if they did not have sex, Ricki would share a sex video the two had made previously. Accordingly, Chen agreed to have sex.

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Case Study #1

Cary has skipped the last several meetings for group projects. They tell group member Wynn that they are skipping because they began receiving sexually charged messages from another student in the group and the messages make them too uncomfortable to attend the meetings. Wynn reports this to the Title IX office, remembering from orientation that it was best to report any unwelcome sex-based behavior.

Brainstorm – Case Study # 1

- x How do you assess this report?
- x What should be your next step?
- x Who do you need to meet with?
 - What information do you need to obtain?
 - What information do you need to provide?

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Case Study #1 – More Details

Cary does not want any corrective action taken and was worried about the other student seeing Cary as “mean” or overreacting.

Brainstorm – Case Study # 1

- x Does the additional information change your assessment of this report?
- x What should be your next step(s)?

Case Study #1 – Second Report

The Title IX staff member recommended that Cary communicate to Remi that they did not want to receive any messages from Remi and block Remi's accounts. Cary did so, but this week started receiving messages from a new phone number, including s(ber)m3-3.3(l)1.8(T7.4(re38)Tj zS1(rs5sis8)Tj(i)5.4.8(0.9626.4(one 1(rs5see11(s f)-5.2(r)-0.9(om)(s f)-5.2(r)-0.9(om)(s f)-5.2(r)-0.9(om

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Case Study #2

A student, Cao, enrolled at the College this semester. Cao reports to the Title IX Coordinator that they were sexually assaulted and abused by Reese, a college employee, in a previous relationship years ago and do not feel comfortable on campus with Reese. Cao completes and turns in a formal complaint form under Title IX.

Brainstorm – Case Study # 2

- x How do you assess this report?
- x What should be your next steps?
- x Who do you need to meet with?
 - What information do you need to obtain?
 - What information do you need to provide?

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