

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

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

All AIXA 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.

AGENDA

1

Coordinator One Review

2

Assessing Your Existing Program

3

Policy Management

4

The Cery Act and Annual Security Reporting

5

Programming and Prevention Efforts

6

Introduction to Climate Assessment

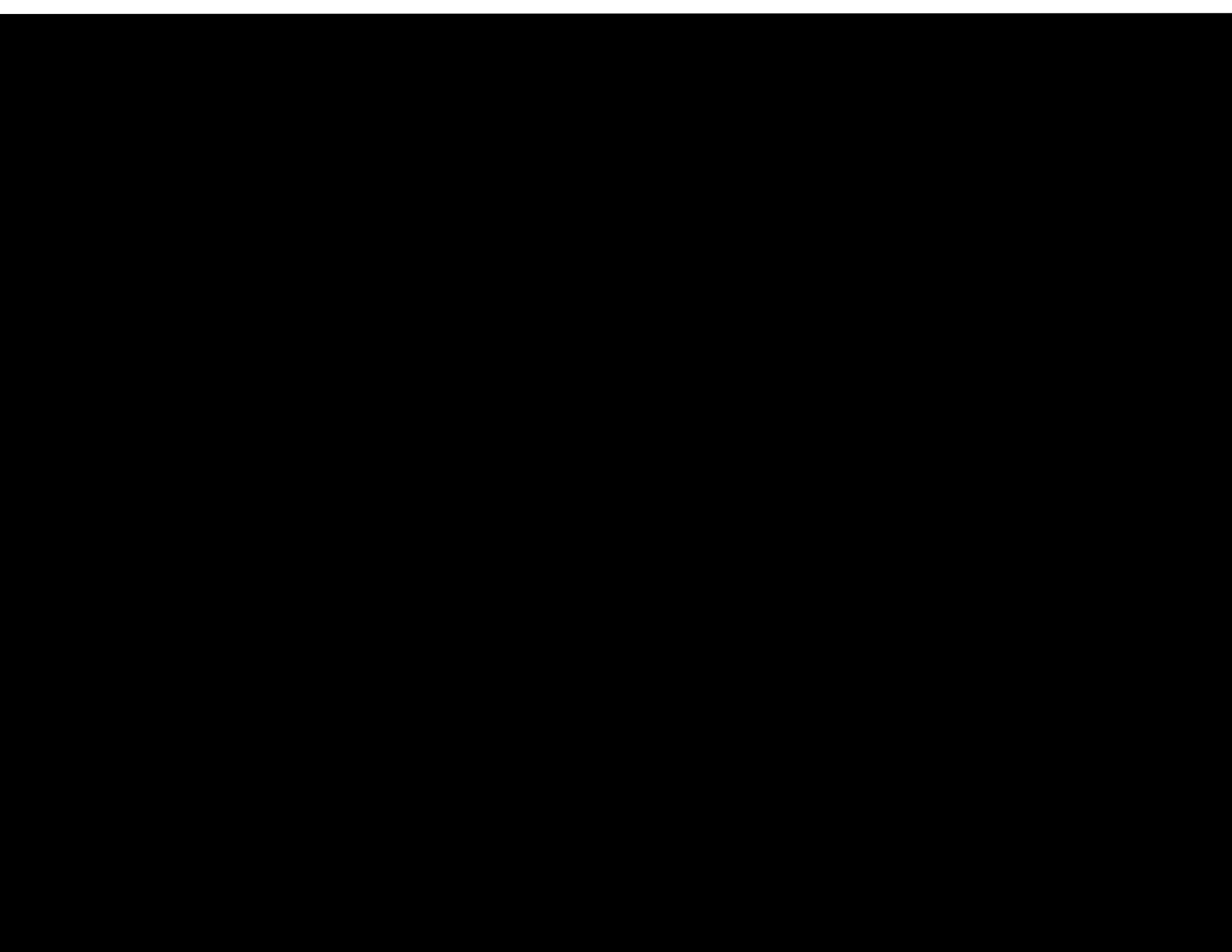
7

Dual Responsibilities Title IX and Section 504 Coordinator

Pregnant and Parenting Students

Missouri and Title IX

Introduction to Title IX and Athletics



TITLE IX REGULATIONS

Congress passed Title IX of the Education Amendments in 1972

Since 1980 the Department of Education's Office for Civil Rights (OCR) has had primary responsibility for enforcing Title IX

November 2018 OCR proposed the most detailed and comprehensive Title IX regulations to date¹

August 2020 Significantly amended, due process oriented Regulations took effect (proposed in Nov 2018)

June 2022 OCR published the Notice of Proposed Rule Making (NPRM) outlining proposed changes to the Title IX regulations

On July 12, 2022, the NPRM was published in the Federal Register and the 60 day comment period began

¹US Office of the Federal Register;

NPRM PROCESS TIMELINE

Official publication in the Federal Register July 12, 2022

Review and comment period

60 day comment period ended September 12, 2022

Submit comments to the Department of Education's Office for Civil Rights (OCR)

Final Rule expected to be issued in Spring 2023

Effective Date approximately Summer/Fall 2023

Watch for ATIXA webinars and other opportunities

There will be a separate NPRM for Athletics

PREPARING FOR IMPLEMENTATION

Must continue to fulfill obligations under the current regulations for the 2022-2023 academic year:

Anticipate OCR will expect schools to implement the new Title IX regulations before the start of the 2023-2024 academic year:

Steps to Take Now

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

COORDINATOR REVIEW

COORDINATOR ONE REVIEW

Members of the Title IX Team

Policies = The Rules

Clearly articulate the difference between making a report v. making a formal complaint

Procedures/“Process” = How alleged policy violations are addressed

When Title IX Applies

Event occurred in the US

Complainant is P/AIP

Respondent is under your control

In a Program or Activity of your institution

Falls under definitions of Section 10630



THE PROCESS

Incident

- **Complainor
Notice to TXC**

Initial Assessment

*Following a formal
complaint*

- **Jurisdiction**
- **Dismissal?**
- **Policy violation
implicated?**
- **Emergency
Removal?**
- **Reinstatement to
another process?**
- **Informal or
formal
resolution?**

DISCUSSION

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

What types of issues are you seeing at your institution?

COMMITMENT BEYOND COMPLIANCE





STRUCTURING YOUR TEAM

Title IX Coordinator(s)

Deputy Coordinator(s)

Investigator(s)

Decision Makers—can be a single Decision maker or a panel of Decision makers

Policy Violation

Appeal

Informal Resolution Facilitator(s)

Institution appointed Advisors (higher education only)

ADDITIONAL CONSIDERATIONS: TITLE IX TEAM STRUCTURE

Title IX Teams can be as small as five people, but will commonly be larger:

TIXC+ 35 deputies (Compliance & Coordination Team)

Institutions of Higher Education (Grievance Process Team)

- **24 Investigators**
- **45 Decision makers (panel + alternates)**
- **13 Appeal Decision makers**
- **13 Informal Resolution Facilitators**
- **46 Trained Advisors**

K-12 Schools (Grievance Process Team)

- **1-2 Investigators per building***
- **1-2 Decision makers per building***
- **1-2 Appeal Decision makers per building***

***Recommend district level as well**

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

Can be a Decision maker if no conflict of interest



ADDITIONAL CONSIDERATIONS: DEPUTY COORDINATORS (CONT.)

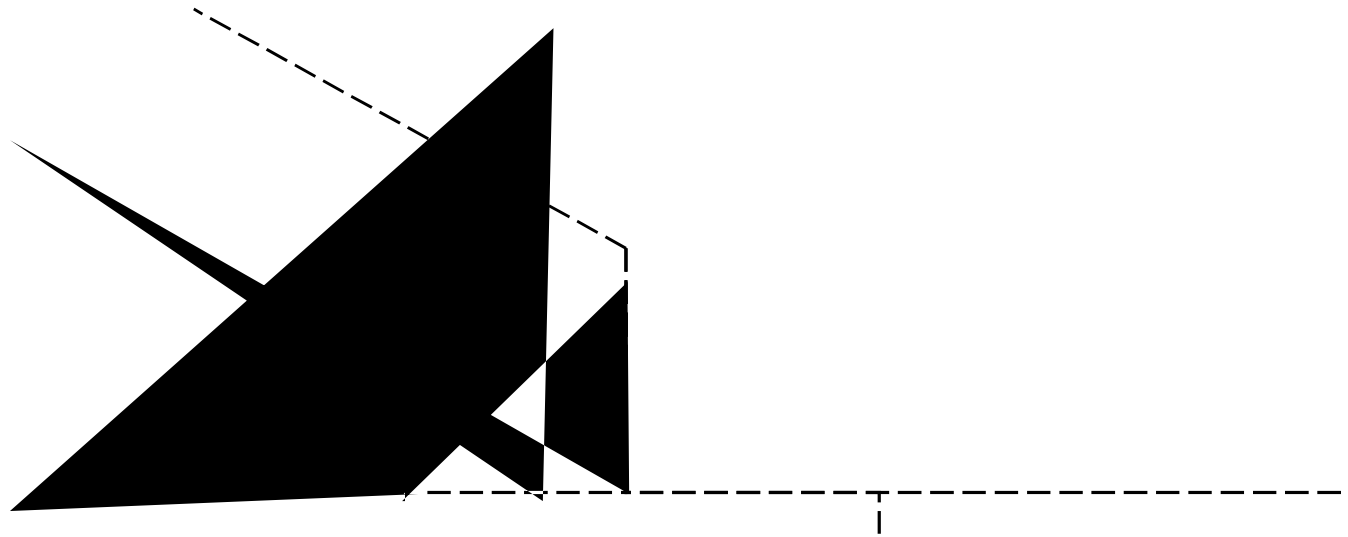
FACTORS TO CONSIDER WHEN STRUCTURING YOUR TEAM

Consider

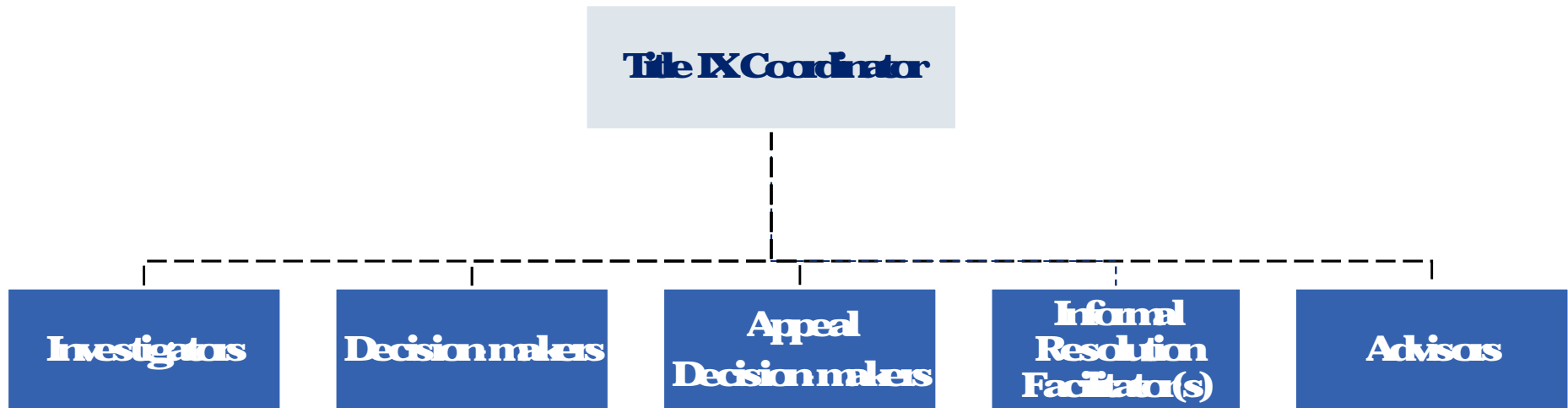
Individuals' normal workload and availability
Heavy workload = less availability
Consider individuals who have more availability

SAMPLE III IEX COMPLIANCE TEAM STRUCTURE- HIGHER EDUCATION

SAMPLE III IEX COMPLIANCE TEAM STRUCTURE - K12



SAMPLE TITLE IX GRIEVANCE PROCESS TEAM



TITLE X TEAM STRUCTURE ADDITIONAL CONSIDERATIONS

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

TITLE X EXTENDED TEAM



EVALUATING YOUR TEAM

Mental health checks 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)

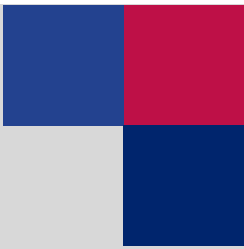
Do they engage in training or professional development that is not required?

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?



CASE STUDY



CASE STUDY PART I (CONT.)

Gianna filed her original complaint to Poe College as non-consensual sexual intercourse because she alleged Jeremy refused to use a condom. Although she told investigators that she had been drinking heavily and could not remember parts of the night, investigators focused solely on her framing of the allegations around consent and disregarded statements and evidence that suggested Gianna's incapacitation.

First responders found a used condom in Gianna's garbage the night of the incident. When asked about the condom, Gianna stated that she guessed it was from her encounter with Jeremy.

CASE STUDY PART I (CONT.)

When the investigators submitted their draft report to the Title IX Coordinator (prior to the parties' first 10 day review period), the TIXC noted that the report did not include evidence related to Gianna's alcohol consumption on the night of the reported incident.

The investigators believed the evidence was not relevant because Gianna alleged a violation on the basis of non consensual sexual intercourse related to condom use.

Questions:

What is your evaluation of the relevance of the evidence related to alcohol consumption?

As the TIXC, how would you handle this situation?

CASE STUDY PART II (CONT.)

Questions:

As the Title IX Coordinator, how would you respond to this situation?

What if Giam does not appeal the decision?

Is there additional training to provide to the Title IX Team?



DISCUSSION

LEVERAGING YOUR AUTHORITY

What have you or your institution done to

Leverage your authority and/or empower your position?

Enhance your institutional profile?

Gain buy-in from senior leadership?

Secure more resources:

- For resolution based efforts? (e.g, Investigators)**
- For programming and education efforts?**
- For training efforts?**

What are you struggling with most?

What has not worked?

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 IIX 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



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



TAKING “INVENTORY”

Are all of these “policy sources” consistent with each other and each other’s goals?

TAKING “INVENTORY” (CONT)

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

TAKING “INVENTORY” (CONT)

Student use of cellular telephones and other electronic devices

Student dress code

School-sponsored travel

Parent/guardian involvement

Education records (defined by FERPA and sometimes state law)

Personnel records (often defined by state law)

Wellness policy (required under federal law only applicable if K-12 district chooses to include sex and gender-based wellness items)

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





THE CERYACT AND ANNUAL SECURITY REPORTING

Annual Security Report Requirements

Timely Warnings and Emergency Notifications

Training Policy, and Procedure Requirements



CLERYACT: 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 34CFR668.46(a)

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



CLERYACTE: ANNUAL SECURITY REPORT REQUIRED CONTENT

Policies

Programs

Substance abuse

**DV/DA, 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/DA, sexual**

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

VAWA identifies requirements for institutions to provide information and services to Complainants that overlap with and add to the supportive measure requirements under Title IX

Policy statements in the ASR must include:

Procedures Complainants should follow if domestic violence, dating violence, sexual assault, or stalking occurs, including information in writing regarding

The importance of preserving evidence to prove a crime or obtain a protective order

To whom such incidents should be reported

That, if the Complainant wishes, campus authorities may assist the Complainant in notifying police



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

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



POLICIES & PROCEDURES: STANDARD OF EVIDENCE

ASR must include a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from a report of domestic violence, dating violence, sexual assault, or stalking

VVA does not require a particular standard

Title IX regulations allow for the choice of using preponderance of the evidence or clear and convincing evidence

ATIXA recommends the preponderance standard, as it is the most equitable standard

Whichever standard is used for students must be used for employees and across all sexual harassment resolution processes

POLICIES & PROCEDURES: PROMPT, FAIR, AND IMPARTIAL

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

Complainant and Respondent are entitled to the same opportunities to have a support person/Advisor of their choice at any proceeding or related meetings

The Complainant and Respondent must be simultaneously informed in writing of:

- The outcome that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking**
- The institution's procedures for appeal**
- Any change to the results that occur prior to the time that such results become final**
- When such results become final**

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





PROGRAMMING AND PREVENTION EFFORTS

VAW Educational Programs and Campaigns

Prevention Education and Training Checklist

Risk Reduction

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



Programmings 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 (34CFR § 10630) 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





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 with sexual harassment, sexual assault, stalking and intimate partner violence

Surveys typically consist of questions that will take 10-20 minutes for participants to respond to with information regarding their perspective and experiences

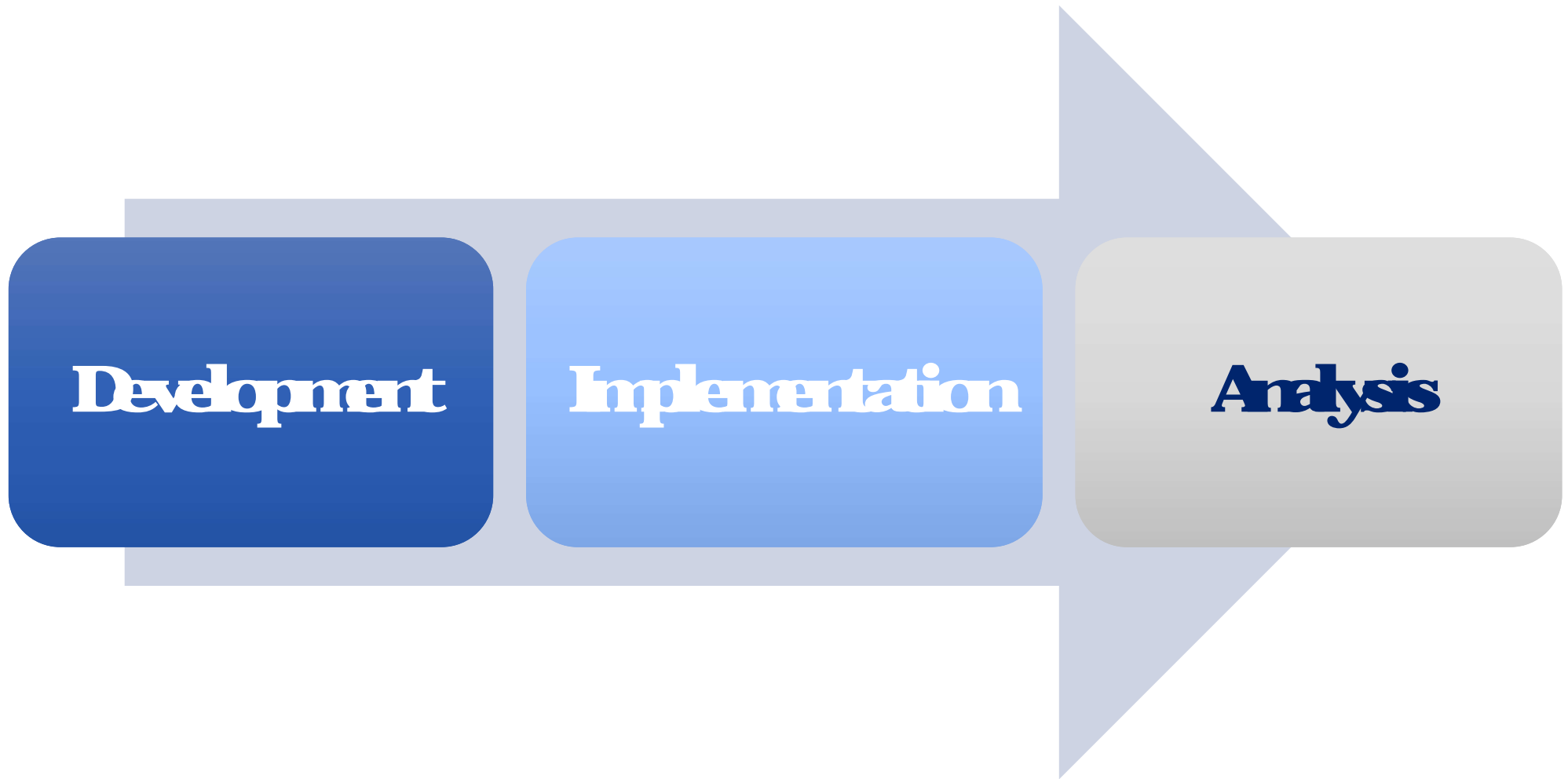
ATIXA suggests shifting away from the temptation of viewing climate surveys as a source of liability for the institution, or an otherwise unpleasant task

May be required by state law

Required for higher education institutions under the 2022 VAWA reauthorization



CLIMATE SURVEY STAGES



SURVEY STRUCTURE

and

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SURVEY STRUCTURE (CONT)

Experience and perception questions should make up the bulk of the survey

Designed to gain a better understanding of the participants' experiences with sexual harassment, sexual assault, stalking and intimate partner violence

Questions can focus on personal observation, personal experience, and/or general perception

Questions should clearly differentiate between experiences that occurred while the participant was affiliated with the institution and experiences which may have occurred prior to affiliation

Experience and perception questions are likely to be more open ended, which will make them harder to analyze but will provide a more complete understanding of participants' views

CLIMATE SURVEYS: TOPICS

ATIA 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 related institutional policies and procedures





ONLINE SURVEY TOOL FOR CAMPUS SAFETY (CONT)

Beginning not later than one year after the date on which the survey tool is available, and every two years thereafter; each institution higher education that receives Federal educational assistance shall administer the survey

Each institutions shall publish, in a manner that is readily accessible and usable by individuals, including individuals with disabilities—

the campus-level results of the standardized elements of the survey

the campus-level results of the additional elements modifying the survey by the institution, if any, on the website of the institution



ANNUAL COMPLAINT ANALYSIS

ANNUAL COMPLAINT ANALYSIS

Consistent with data provided for the ASR

Some systems provide automatic report creation

eg, Mixient, Advocate, Guardian, etc

Can assist in prevention and program planning for new and returning students each year

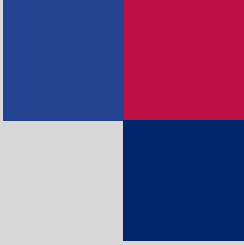
Inform of potential problematic behaviors, groups, or physical locations that might need more direct attention

May indicate bias concerns related to reporting and/or outcomes

Helps inform where to allocate prevention resources

Helps with efforts to assess where policies and procedures require modification or clarification





DUAL RESPONSIBILITIES: TITLE IX & SECTION 504 COORDINATOR





SIMILARITIES BETWEEN TITLE IX AND 504 COORDINATOR

Title IX Coordinator

**Ensure compliance with
requirements related to
sex based discrimination**

Publication of non

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 rule concerning a student’s actual or potential parental, family, or marital status which treats students differently on the basis of sex”

34CFR § 106.40

WHY IS IT IMPORTANT TO PROTECT PREGNANT AND PARENTING STUDENTS?

“According to a survey conducted by the Bill and Melinda Gates Foundation, a third of young women who did not finish high school stated that becoming a parent played a major role in their decision to leave. Only about half of young mothers will earn a high school diploma by the age of 22, compared with 89 percent of women who did not have a child during their teenage years, and one third of young mothers will never get a GED or a diploma.”

(Source: National Women's Law Center: <https://nwl.org/resource/stopping-school-pushout-for-girls-who-are-pregnant-or-parenting/>)

PREGNANCY DEFINED

Pregnancy and related conditions:

“A Recipient shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.” (34CFR § 106.40)





PREGNANCY & TITLE IX

**June 2007 'Dear Colleague
Letter'**

**June 2013 DCL on Pregnant
and Parenting Students**

Regulatory Language

Case Discussion

THE OUR, 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**







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 attention of a physician” (34CFR § 106.40)

“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



PREGNANCY & TITLE IX COOR GUIDANCE

Doctor's Note to Participate

“Schools cannot require a pregnant student to produce a doctor's note in order to stay in school or participate in activities, including interscholastic sports, unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor.” (31CFR § 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

“In the case of a Recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began” (34CFR § 106.40)



PREGNANCY & TITLE IX EXCUSED ABSENCES AND MEDICAL LEAVES

Teachers and faculty must understand that they are required to excuse absences/medical leaves as determined by the Title IX Coordinator

May not refuse to allow work to be submitted after deadline if missed due to pregnancy or childbirth

If grading is based in part on class participation or attendance





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 discriminatory allegation

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

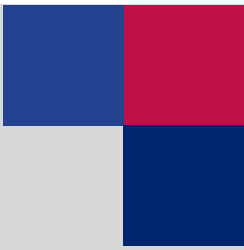
Make sure website(s) describe the iterative process

ATHLETICS, PREGNANCY, AND TITLE IX

NCAA Guidance

A pregnant student athlete's physicians 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 * ! Ê \$ s



CASESTUDY

Sii



CASE STUDY DISCUSSION SIRI

Siri is furious with this decision and explains that she is perfectly able to complete her clinical hours if given the appropriate accommodations, which she adds, is her right. Siri also explains that she wants to graduate with her cohort, and she already has a nursing job ready for her when she graduates and passes the licensure exam.

Siri also shares that by delaying her completion of the program, her VSA may be in jeopardy of being cancelled.

The Director is adamant that Siri is a liability and refuses to schedule or sign off on any hours for Siri until post-pregnancy.

What are your recommendations?



SPECIAL TOPICS

**Nursing rooms, mothers'
lounges, etc.**

Residence halls

**Labs, chemicals, exposure to
diseases, etc.**

Cohort programs

Licensure requirements

**Online learning/homebound
instruction**

Childcare

NURSING ROOMS, MOTHERS' LOUNGES, ETC

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

LABS, CHEMICALS, EXPOSURE TO DISEASE, ETC

~~Identify and investigate health and safety (as determined by the relevant authority)~~

COHORT PROGRAMS & LICENSURE REQUIREMENTS

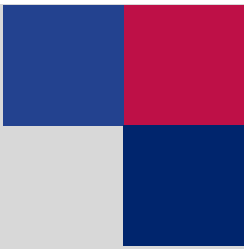
Recipient is obligated to accommodate pregnant students

Can recommend, but cannot force a student to change academic courses or programs

Students should still be held accountable for course work completion and standards regardless of pregnancy

Provide options to pregnant students and allow them to make the decision of which path they take

There are always options to accommodate pregnant and parenting students while still adhering to licensure requirements. May require thinking outside of the box



CASE STUDY

Sasha

CASE STUDY: SASHA

Sasha is a sophomore theatre major and just found out she is pregnant. Sasha is having a very rough first trimester and is having to miss a lot of rehearsal time for a play in which she was recently cast as the lead role.

Professor Alexa, Sasha's Acting I instructor and the director of the production Sasha is in, has a very strict attendance policy when it comes to missing rehearsals.

Professor Alexa's policy is, if a student misses more than two rehearsals, they are removed from their role. Sasha has now missed her third rehearsal and is removed from the lead role and the play altogether.

CASE STUDY: SASHA

Sasha is mad that she has been removed from the cast of the show and reports to you that she is being discriminated against based upon her sex and pregnancy status.

Professor Alex states that Sasha's removal has nothing to do with her sex or pregnancy status and has everything to do with the attendance policy which is applied equally to all students in productions.

Furthermore, according to the national theatre accrediting body, each production must include a minimum of twenty rehearsal hours for each actor prior to the first full dress rehearsal in order for the play to be eligible for 1



ONLINE LEARNING & HOMEBOUND INSTRUCTION

If this is a service offered to other students with temporary medical conditions, it should be offered to pregnant and parenting students

More common following the pandemic

All other accommodations should still apply, if applicable

Cannot force student into this option but can recommend

Maybe appropriate to offer to other parent if this falls under Recipient's leave policy

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 for all other students as well

Important for teachers/faculty to set the tone early

Be consistent



MNORS AND TITLE IX

Misconduct on Campus

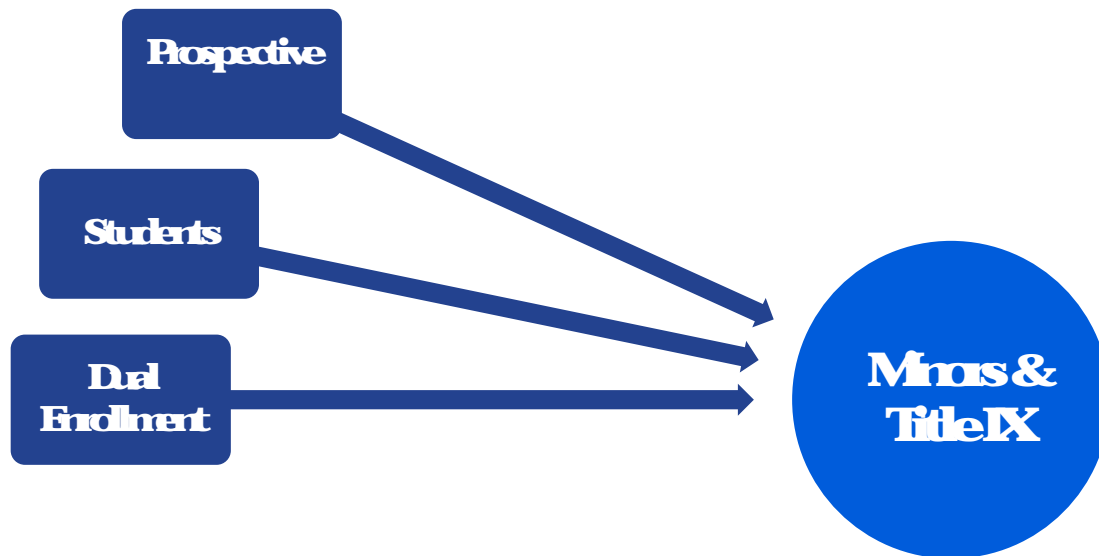
Dual Enrollment

Operative Questions

Abuses

Sample Policy

MINORS AND TITLE IX



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 where they are?

Who is responsible for them?

Who is training those responsible?

Reporting/referring

BIU/Title IX Clerk

Parental/guardian notification

Age of consent laws

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

- They come through a shell or through the school
- The employees are our



MINORS AND TITLE IX

Additional policy considerations (Cont.):

Facility usage policies

eg: 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. Clergy Act reporting of offenses for statistical purposes occurs whether victims are minors or adults.

MINORS AND TITLE IX ABUSE PREVENTION

Prevention and detection – sexual abuse of minors

Policies

Screening and selection

Training

Monitoring and supervision

Consumer participation – educate parents and guardians

Reporting systems and mechanisms

Response – prompt, effective, and compliant with laws

Administrative practices

MINORS AND TITLE IX MORE CONCERNS





INTRODUCTION TO THE X AND ATHLETICS

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

OVERSIGHT OF ATHLETICS GENDER EQUITY



**Equivalent Treatment
of Student Athletes**



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)

Queer: Denoting or relating to a sexual or gender identity that does not correspond to established ideas of sexuality and gender; especially heterosexual norms

Cisgender: Gender identity is consistent with the sex assigned at birth

Transgender: Denoting or relating to a person whose sense of personal identity and gender does not correspond with their birth sex

Gender-Variant/Diverse: Denoting or relating to a person whose behavior or appearance varies or is diverse from prevailing cultural and social expectations about what is appropriate for their gender

Gender Fluid: Denoting or relating to a person who does not identify themselves as having a fixed gender

TERMINOLOGY (CONT)

Nonbinary:

TERMINOLOGY (CONT)

Pansexual: Attracted to people regardless of gender

Gay: Attracted to people of the same gender (typically refers to males)

Lesbian: A female who is attracted to people of the same gender

ADDITIONAL TOPICS

What does it mean to “transition?”

Social

Medical

Legal

Pronoun Usage

They/them/theirs

She/her/hers

He/him/his

Other nonbinary 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*’

‘As numerous courts have recognized, a school’s policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm’

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*

TITLE IX & TRANSGENDER INDIVIDUALS

Common Concerns and Current Challenges

State based legislation

Do it! ! tio / ao / l ö ad

TITLE IX & TRANSGENDER INDIVIDUALS

Common Concerns and Current Challenges (Cont.)

Resources, services, and programs based on the gender binary (e.g., Homecoming King and Queen, Women's Clinic)

PRONOUNS AND CHOSEN NAMES

Names & Pronouns

Education and employment records

Databases and records systems

Identification documents

Classrooms, offices

Xgender marker on official identification

The need to educate our communities

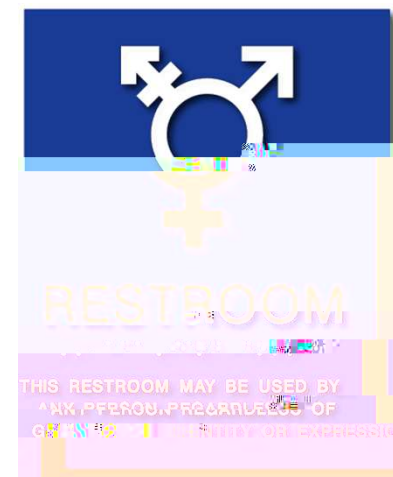
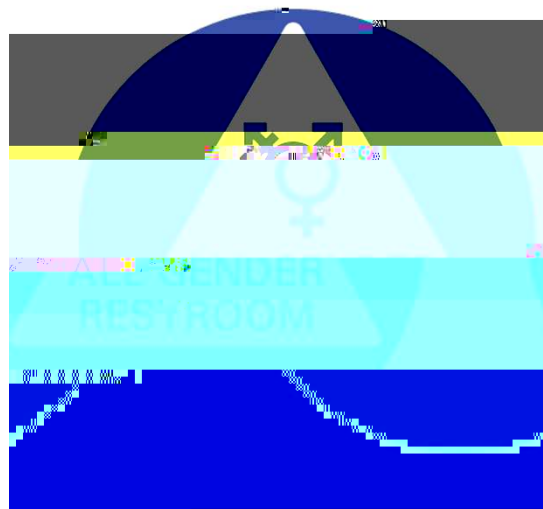
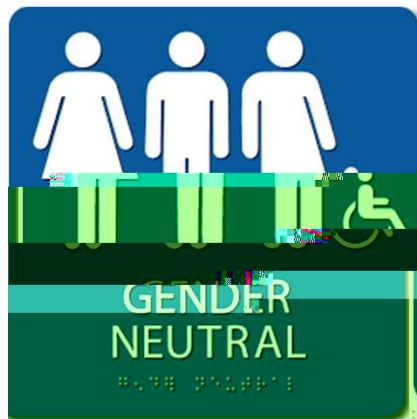
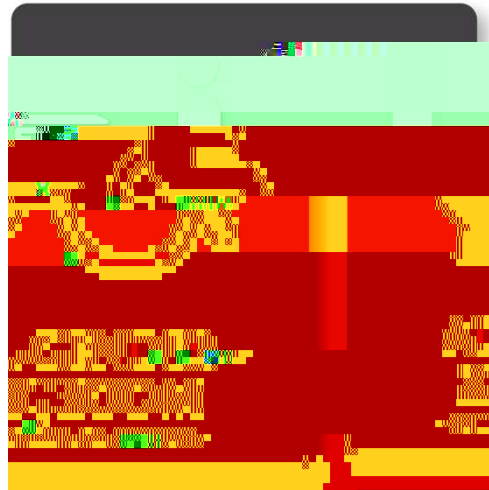
Maintaining Privacy

Maintain privacy in relation to gender identity to the extent possible

Sex and gender, including transgender status, should not be included as directory information



ACTIVITIES AND FACILITIES (CONT.)



DO NOT TRANSGENDER STUDENTS (RESCINDED)

Athletics

Beware of requirements that rely upon overly broad generalizations or stereotypes

Discomfort with transgender students

NCAA, NCAAW, 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

DO NOT 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



TECHNOLOGICAL ABUSE AND CYBER HARASSMENT

VAWA 2022 TECHNOLOGICAL ABUSE

2022 Reauthorization added the term ‘technological abuse’ to mean

an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor; except as otherwise permitted by law and other person, that occurs using any form of technology, including but not limited to internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies

OVERLAP BETWEEN TECHNOLOGICAL ABUSE AND SEXUAL EXPLOITATION

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

ATIA's Model Definition of Sexual Exploitation (non 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

ATIXA'S MODEL DEFINITIONS: 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 Stalking

CYBER HARASSMENT

The use of communication technologies or any other emerging technologies to harass or bully another person

Also called cyberbullying

Most often occurs on social media platforms or other online forums

Engaging in repeat behaviors directed at a specific person with the intent to cause harm

Threats

Encouraging self-harm

Spreading gossip or posting rumors

Impersonation

Sharing private and/or personal information

Disparaging sex and gendered based speech

Hate speech

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

LIMITATIONS ON JURISDICTION

Actions/conduct/speech protected by academic freedom
Pedagogically appropriate and germane to the subject
matter of course that instructor hired to teach/research

Actions/conduct/speech protected by the First
Amendment.

Merely offensive conduct cannot be disciplined at a
public school

Must be severe, pervasive, and objectively
offensive

TAKEAWAYS

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

Institutional harassment/discrimination policies

Student Handbook/conduct policies

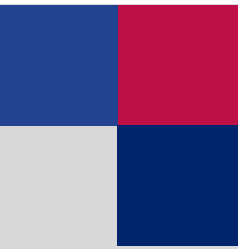
Technology/Acceptable Use policies

Employee Handbook/conduct policies

Professionalism standards

Institutions should still take steps to

Provide support and resources to the Complainant to address any “downstream effects”



INTRODUCCION TO TRAUMA

INTRODUCCION TO TRAUMA



ATIX 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

We as 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 forgot 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

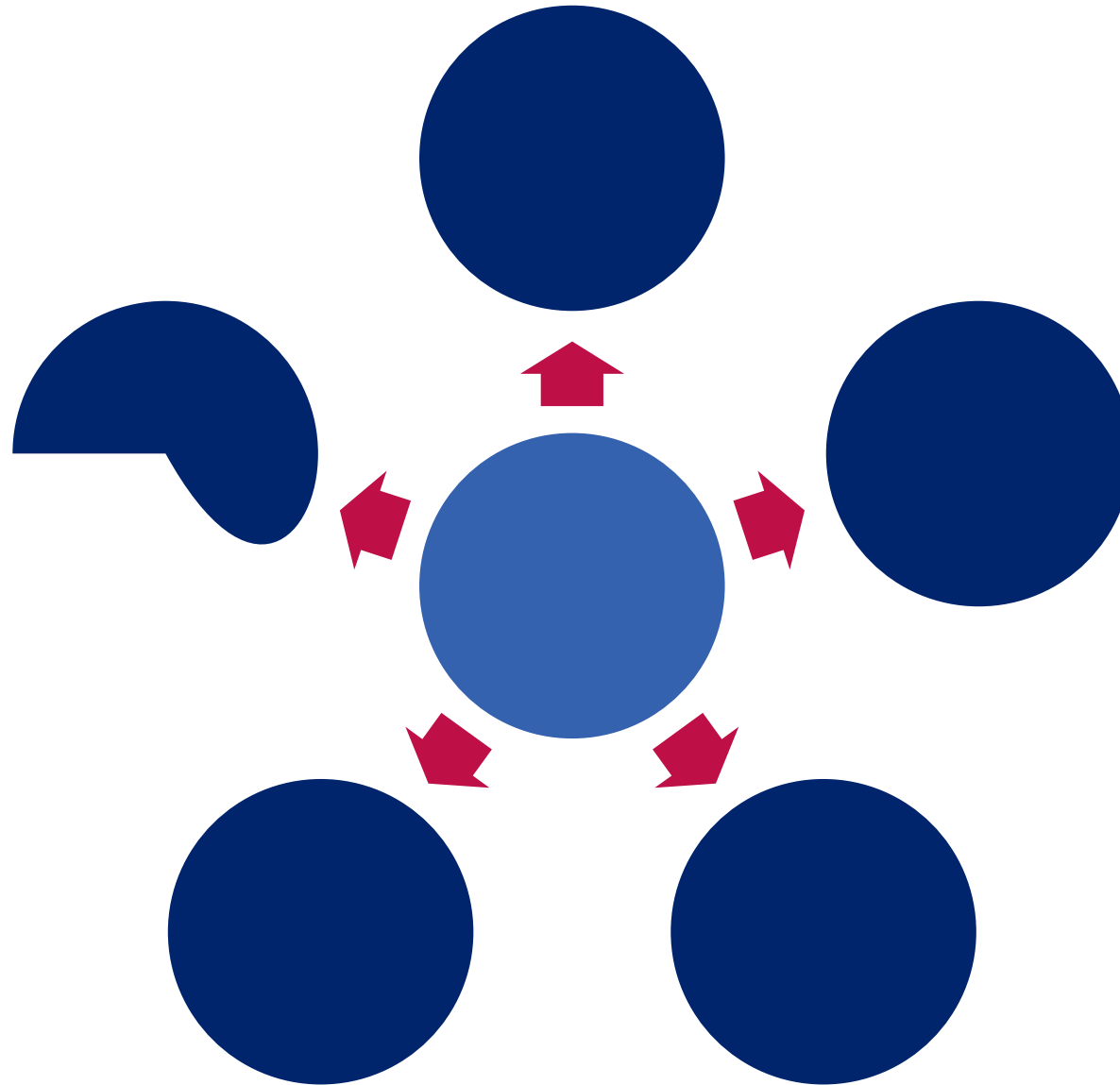
Natural Disasters

Sexual Violence

Relationship Violence

Stalking

IMPACT OF TRAUMA ON FUNCTIONING



VICTIM RESPONSE TO TRAUMA

Maybe impacted by:

Personality

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 whom 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 whom may have a disability



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)

Collaboration & Mutuality

- Institution recognizes everyone has a role to play in the trauma informed approach
- Example: Including stakeholders in policy decision making

Empowerment, Voice, & Choice

- Institution recognizes that every person's experience is unique and requires an individualized approach
- Example: Providing an individual options for resolving a complaint

Cultural, Historical, and Gender Issues

- Institution offers culturally responsive services
- Example: Understand the role of beliefs in the interpretation of trauma and the recovery process and provides services for varying beliefs



VAWA COMPLIANCE CHECKLIST



Questions?



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