



# Understanding Title IX and WIU's Policies

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# Agenda for Part I Video Training

- Legal Framework for Sexual Harassment
- Key Elements of a Legal Claim of Hostile Environment Sexual Harassment
- Recent Legal Developments and Changes
- Key Terminology and Definitions

The background of the image features several black silhouettes of human hands raised in the air, set against a light blue gradient background. The hands are positioned at various heights and angles, creating a sense of collective participation or a group of people asking questions.

Save Questions



Participant

# Part II: Participation



Keep it hypothetical

Mandatory Training

SEXUAL HARASSMENT  
compliance



# Legal Framework for Sexual Harassment

## Employment

- Illinois Human Rights Act
- Title VII
- Title IX
- Clery Act/Violence Against Women Act

## Students

- Illinois Human Rights Act
- Preventing Sexual Violence in Higher Education Act
- Title IX
- Clery Act/Violence Against Women Act



A close-up, high-resolution photograph of a human eye, showing the iris, pupil, and eyelashes. The eye is looking directly forward. The text is overlaid in the center of the eye.

**Recognize  
Title IX Sexual Harassment and Related  
Misconduct**



But not just any action, the right action for  
the conduct at issue!



# What is Title IX?



# Title IX Statute

(20 U.S.C. §§ 1681–1688)

"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."

# What falls under Title IX?

Recruitment,  
Admissions, and  
Counseling

Financial  
Assistance

Athletics

Sex-Based Conduct  
(Umbrella  
Definition under  
2024 regulations)

Treatment of  
Pregnant &  
Parenting Students

Discipline

Single-Sex  
Education

Employment

Retaliation

# Title IX Regulations

(34 C.F.R. Part 106 – Amended as of 8/14/2020) (updates take effect 8/1/2024)

- Prohibit discrimination on the basis of sex
- Establish procedural requirements
  - Policy
  - Detailed Grievance procedure
  - Designation of Title IX coordinator(s)
  - Many many requirements



# Other Applicable Laws



# Illinois Human Rights Act (IHRA)

The IHRA is the primary state law addressing non-discrimination in Illinois.

It prohibits discrimination based on various protected characteristics, including race, color, religion, sex, national origin, age, disability, and other categories.





# IHRA Protection for Sex-Based Discrimination

"Sex" means the status of being male or female.

Sexual orientation. "Sexual orientation" means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth. "Sexual orientation" does not include a physical or sexual attraction to a minor by an adult.

# Title VII

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1

Prohibits discrimination in employment based on race, color, religion, sex and national origin

2

Prohibits hostile work environments and quid pro quo harassment

# How Does Clery/VAWA Relate to Title IX?

- Contains policy and procedural requirements for addressing complaints of domestic violence, dating violence, sexual assault, and stalking
  - Timely warnings, emergency notifications
  - Requirements following a report
  - Broader AND narrower than Title IX
- ASR and other reporting
- Prevention requirements

# What Does VAWA Require?

- Specific requirements for policies and procedures, including:
  - Description of disciplinary proceedings
  - Steps, anticipated timelines, and decision-making process
  - How to file a complaint
  - Standard of evidence
  - List of all possible sanctions and description of protective measures
  - Prompt, fair and impartial process
  - Conducted by individuals who receive annual training
  - Advisor of choice
  - Various written notification requirements, including:
    - Written notification about options for accommodations and protective measures
    - Simultaneous notification to parties of certain results

# Required Programming Under VAWA

- Primary prevention and awareness programs for all incoming students and new employees
- Ongoing prevention and awareness campaigns for students and employees
- Range of topics, including definitions of prohibited conduct, resolution procedures, possible sanctions and protective measures, and available resources and options

# Illinois Preventing Sexual Violence in Higher Education Act

- Comprehensive policy and procedure concerning sexual violence, domestic violence, dating violence and stalking
- Written explanation of rights and options to survivors
- Confidential Advisors to survivors
- Training requirements

# Additional Requirements

- Offer students options to make reports in various ways, including anonymously
- Respond to electronic report within 12 hours
- Define consent in policy
- Participate in campus-wide or regional task force
- Annually report data

# When Must the Institution Respond to Sexual Harassment (Sex Based Harassment 2024)?





# It Depends Who [Well, Which Law] You Ask

## Employment

- Illinois Human Rights Act
- Title VII
- Title IX
- Clery Act/Violence Against Women Act

## Students

- Illinois Human Rights Act
- Preventing Sexual Violence in Higher Education Act
- Title IX
- Clery Act/Violence Against Women Act

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# When must a school respond to Title IX sexual harassment?

A recipient with **actual knowledge** of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent.

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2024 - A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively. (§ 106.44(a)(1)).

# Actual Knowledge - Official with Authority



- Title IX Coordinator
- Any other officials who have been given authority to institute corrective measures on behalf of the recipient
- *2024 All employees except confidential employees.*



## **Title IX Actual Knowledge**

1. Sense
2. Report

# Reporting Sexual Harassment: Who, How and When?

- Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator
- Or by any means that results in the Title IX Coordinator receiving the person's report
- Such a report may be made at any time, including during non business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator

## Key Word: “Allegation”

Once a school has notice of an **allegation** that, **if true**, would constitute sexual harassment, it must respond

“Well, we didn’t believe there was enough evidence it happened” does not get you past your responsibility to use your Title IX procedures

# Key Roles in Responding to Reports

- Medical providers
- Law enforcement
- Community/outside agencies

# Involvement of Law Enforcement

- Complainant has the option to involve law enforcement, including:
  - Notifying law enforcement, including on-campus and local police
  - Request assistance from campus authorities
  - Decline to notify law enforcement or campus authorities
- Orders of protection, no contact orders, restraining orders

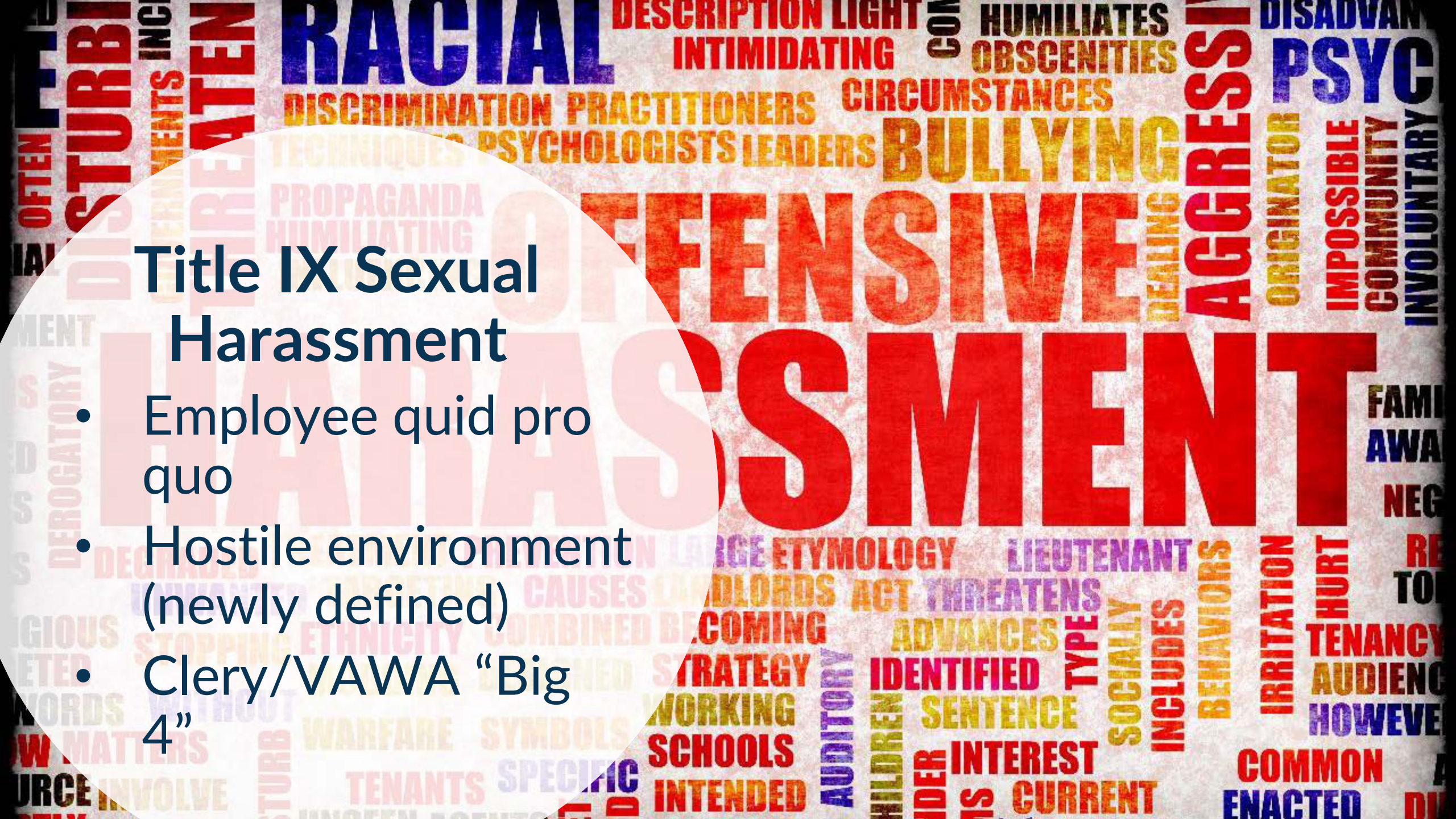


# What is Sexual Harassment?



# Title IX Sexual Harassment

- Employee quid pro quo
- Hostile environment (newly defined)
- Clery/VAWA “Big 4”



QUID  
PRO  
QUO

# Quid Pro Quo

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Quid = Something

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Pro = For

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Quo = Something

# Title IX Quid Pro Quo

**Definition:** An employee of the recipient conditioning an aid, service, or benefit of the recipient on an individual's participation in unwelcome sexual conduct

**New:** Only an employee (not a volunteer, another student, etc.)

**Codified:** Severity and harm presumed

# Clery/VAWA

Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)

Domestic Violence 34 U.S.C. 12291(a)(8)

Dating Violence 34 U.S.C. 12291(a)(10)

Stalking 34 U.S.C. 12291(a)(30)

# Key Elements of a Legal Claim of Hostile Environment Sexual Harassment



# Title IX Hostile Environment



# Title IX – What is Sexual Harassment?

## Old Definition

Unwelcome conduct determined by a reasonable person to be **severe, pervasive or persistent as to interfere with or limit a student's ability to participate in or benefit from school services, activities, or opportunities**

## New Definition (8/1)

**Unwelcome sex-based conduct** that, based on the totality of the circumstances, is **subjectively and objectively offensive** and is so **severe or pervasive** that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.

# Unwelcome Conduct

- Not **Consent**
- Not **Participation**
- Not **Silence**
- Age Matters
- Intoxication Matters
- Culture Matters
- Ability Matters



# Unwelcome vs. Consent

- Consent under Illinois law
- Consent under your Institution's policy
- Role of drugs and alcohol on ability to consent



- 2020 (Sexual Harassment)
- Severe, pervasive, and objectively offensive
- Constellation of surrounding circumstances, expectations, and relationships
- Reasonable person standard

- 2024 (Sex Based Conduct)
- Unwelcome sex-based conduct
- Based on the totality of the circumstances, and
- Is subjectively and objectively offensive and
- Is so severe or pervasive that it limits or
- Denies a person's ability to participate in or benefit from the education program or activity.

**ACCESS DENIED**

# Hostile Environment Factors

Context, Nature, Scope, Frequency, Duration, and Location of the Incidents

Identity, Number, Ages, and Relationships of the Persons involved

**What  
about....  
casual or  
isolated  
comments  
or conduct?**



# Thumbs Up or Down

Is this unwelcome, severe, pervasive, and objectively offensive sexual harassment?

Is this unwelcome, severe or pervasive, and subjectively and objectively offensive?



# Is this Title IX Sexual Harassment?



A staff member makes ongoing jokes about a coworker's sexual orientation



An administrator asks a staff member out on a date once



A female administrator repeatedly tells a male subordinate how good he looks after losing weight



A parent repeatedly sends emails with dirty jokes to a teacher

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## Is this Title IX Sexual Harassment?

Male students photographed themselves outside the student center holding a sign that read “We Love WIU Sluts.”



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## Is this Title IX Sexual Harassment?

A report is circulated among clubs ranking first year women by how drunk you would have to be to hook up with them.



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## Is this Title IX Sexual Harassment?

Students held a “march” chanting “No means yes; yes means anal.”



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## Is this Title IX Sexual Harassment?

A professor tells a student he will give her a good grade if she gives him a backrub alone in his office after class.



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## Is this Title IX Sexual Harassment?

A group of students incessantly taunts another student, calling her a slur used for lesbians and mocking her “boy” hair.





Title IX Sexual  
Harassment  
Must Be “In a  
Program or  
Activity”



**Program or Activity:** Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred

2024

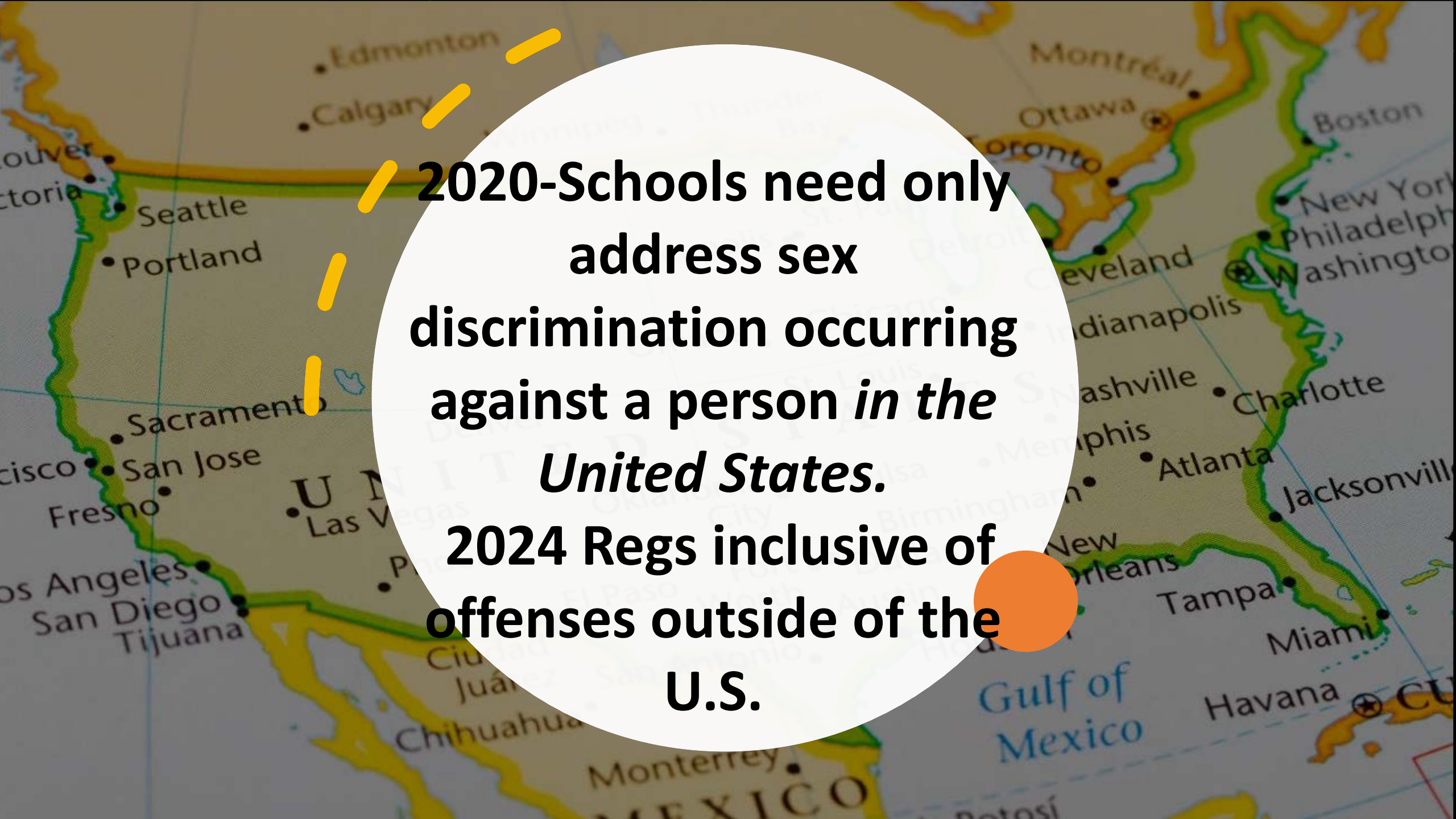
- Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution; and
- Conduct that is subject to the recipient’s disciplinary authority.



# Online & Off Campus

Substantial control over the context?



A map of the United States is shown in the background, with various cities labeled. A large white circle is overlaid on the map, containing text. The text is in bold black font. The first line reads "2020-Schools need only address sex discrimination occurring against a person *in the United States.*" The second line reads "2024 Regs inclusive of offenses outside of the U.S." There are several yellow dashed lines on the left side of the white circle and a solid orange circle on the right side.

**2020-Schools need only  
address sex  
discrimination occurring  
against a person *in the  
United States.***

**2024 Regs inclusive of  
offenses outside of the  
U.S.**



# TIX DISMISSALS

## **Mandatory if conduct alleged:**

- Not TIX sexual harassment if true
- Did not occur in the school's program or activity
- Did not occur in the United states

\*\*can still address under non-Title IX policy

## **Permissive if:**

- Complainant requests to withdraw in writing
- Respondent's enrollment or employment ends
- Specific circumstances prevent recipient from gathering evidence sufficient to reach a determine (e.g., passage of time, lack of cooperation by complainant)

# 2024 TIX DISMISSALS

- (1) A recipient may dismiss a complaint of sex discrimination made through its grievance procedures under this section, and if applicable § 106.46, for any of the following reasons:
  - (i) The recipient is unable to identify the respondent after taking reasonable steps to do so;
  - (ii) The respondent is not participating in the recipient's education program or activity and is not employed by the recipient;
  - (iii) The complainant voluntarily withdraws any or all of the allegations in the complaint,
  - Title IX Coordinator declines to initiate a complaint under § 106.44(f)(1)(v), and the recipient determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX
- (iv) The recipient determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this part.
- Prior to dismissing the complaint under this paragraph, the recipient must make reasonable efforts to clarify the allegations with the complainant.
- (2) Upon dismissal, a recipient must promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.



Title IX Policy

Other Policies

Consider whether another non-"sexual harassment" policy or procedure applies

Conduct that, if true, would be "Title IX Sexual Harassment" in a program or activity in the U.S.

Conduct that, even if true, would not "Title IX Sexual Harassment" in a program or activity in or outside the U.S.

# Recent Legal Developments



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# New Title IX Regs Have Arrived!



# Title IX Coordinator as Complainant

- A recipient knows to honor a complainant's request not to proceed with a complaint investigation unless the
- Title IX Coordinator makes a fact-specific determination that the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the recipient from ensuring equal access based on sex to its education program or activity.



# Imminent and Serious Threat Analysis

- (1) The complainant's request not to proceed with initiation of a complaint;
- (2) The complainant's reasonable safety concerns regarding initiation of a complaint;
- (3) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- (4) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (5) The age and relationship of the parties, including whether the respondent is an employee of the recipient;
- (6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- (7) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
- (8) Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under § 106.45, and if applicable § 106.46.

# Victim Rights Law Center v. Cardona



- Vacating one part of regulation that prohibited the decision maker from relying on a statement not subject to cross-examination
- Practically, allows consideration of evidence in investigation report only

# Doe v. Rollins College, August 14, 2023

## Decision



Court found no evidence by which a reasonable juror could conclude that Rollins conduct toward Plaintiff was motivated by his gender.



Pressure from U.S. Department of Education via Dear Colleague Letters does not create anti-male bias



When Do Universities Have Control Off Campus?



Brown v. State of Arizona (September 25, 2023)



While the physical location of harassment can be an important indicator of the school's control over the context of the alleged harassment, a key consideration is whether the school has some form of disciplinary authority over the harasser in the setting in which the harassment takes place.

# Interagency Task Force on Sexual Violence in Education

- Joint task force under the Departments of Education, Justice, and Health and Human Services.
- [First report: released](#)
- Addresses gaps and challenges in Title IX investigations and in the enforcement, recruitment and retention of Department of Education Office for Civil Rights (OCR) and Clery investigators; outreach and training for law enforcement and educational institutions; and best practices in the areas of campus sexual violence prevention, investigation and response.


# Dobbs v. Jackson Women's Health

- Overturned 1973 ruling in *Roe v. Wade*
- OCR responded with guidance, *Discrimination Based on Pregnancy and Related Conditions*, confirming that Title IX covers discrimination against students and employees based on pregnancy and related conditions.
- The OCR resource specifically states that Title IX protections pertaining to pregnancy include a prohibition against discrimination based on abortion.

# Key Terminology and Definitions



Apply to parties in both *reports* and *Formal Complaints* of sexual harassment



*Title IX Complainant*: A person who is alleged to be the victim of conduct that could constitute sexual harassment

**NOT a third party who reports Title IX Sexual Harassment perpetrated against someone else**

**NOT the Title IX Coordinator, even if the TIXC "signs" a Formal Complaint**



*Title IX Respondent*: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment

# Terminology



## 2020-Formal Complaint

Defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. 34 C.F.R. § 106.30(a).

## 2024- Complaint

*Complaint* means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.

# Supportive Measures

## What Changed?

### OLD TERM

#### (OCR Guidance)

- Used terms such as “interim measures” or “interim steps” to describe measures to help a complainant maintain equal educational access
- Implied only available during pendency of investigation, did not mandate offering them, not clear if could be punitive or disciplinary, and did not clarify if available to respondents

### NEW TERM

#### (Final Rule)

- **Non-punitive, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no complaint has been filed (34. C.F.R.106.30(a)).**
- **Should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party**



# Examples of Supportive Measures

- Counseling
- Course modifications
- Schedule changes
- Increased monitoring or supervision

A supportive measure that completely removes a respondent from an activity would likely be considered punitive, except for “emergency removals” for students and “administrative leaves” for employees

# Emergency Removal/ Admin Leave

## Student immediate emergency removal

(34 C.F.R. 106.44(c))

- Based on an individualized safety and risk analysis
- Necessary to protect a student or other individual from **immediate threat to physical health or safety**
- **Notice, opportunity to challenge** provided “immediately” provided the removal
- Consider other laws

## Employee administrative leave

(34 C.F.R. 106.44(d))

- Not prohibited
- Consider state law, board policy, handbooks, and bargaining agreements

# Confidentiality

- Not required to maintain anonymity of Complainant after formal complaint is filed
- Both parties must be identified (if identity is known) in written notice of allegations
- Using party initials or withholding Complainant's identity is insufficient

# Relevance

- Cross-Examination
- Provide reasoning for irrelevance
- Consider all relevant evidence
- Exceptions

# Relevance

- Rape shield laws
- Treatment records
- Legally privileged information
- Improper inference
- Prior statements



A woman with long dark hair in a ponytail, wearing a red and black plaid shirt, sits at a wooden desk. She is looking thoughtfully out a window, with her hand resting on her chin. On the desk is a vintage typewriter and a vase of purple and pink flowers. A green wooden chair is behind her. The scene is brightly lit from the window.

Live Hearing  
Technology

# Bias

The Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent. And that they not prejudge any matter before them.

# Conflict of Interest

- Flexibility to choose employees or outsource adjudication functions
- No *per se* prohibited conflicts of interest when using school employees or individuals with histories of working in field of sexual violence as decisionmaker
- Caution against using generalizations to identify conflict of interest

# Pre-Judgment

Tips for avoiding pre-judgment of facts:

- Each case is fact-specific
- Keep an open mind
- Actively listen to facts presented
- Statements by parties that do not submit to cross-examination cannot be considered

# Role of Advisors in Hearings

- Parties must have an advisor to conduct cross-examination, whether chosen by a party or the recipient
- Challenging relevancy determinations
- Consider confidentiality obligations

# Questions

