



Online Course

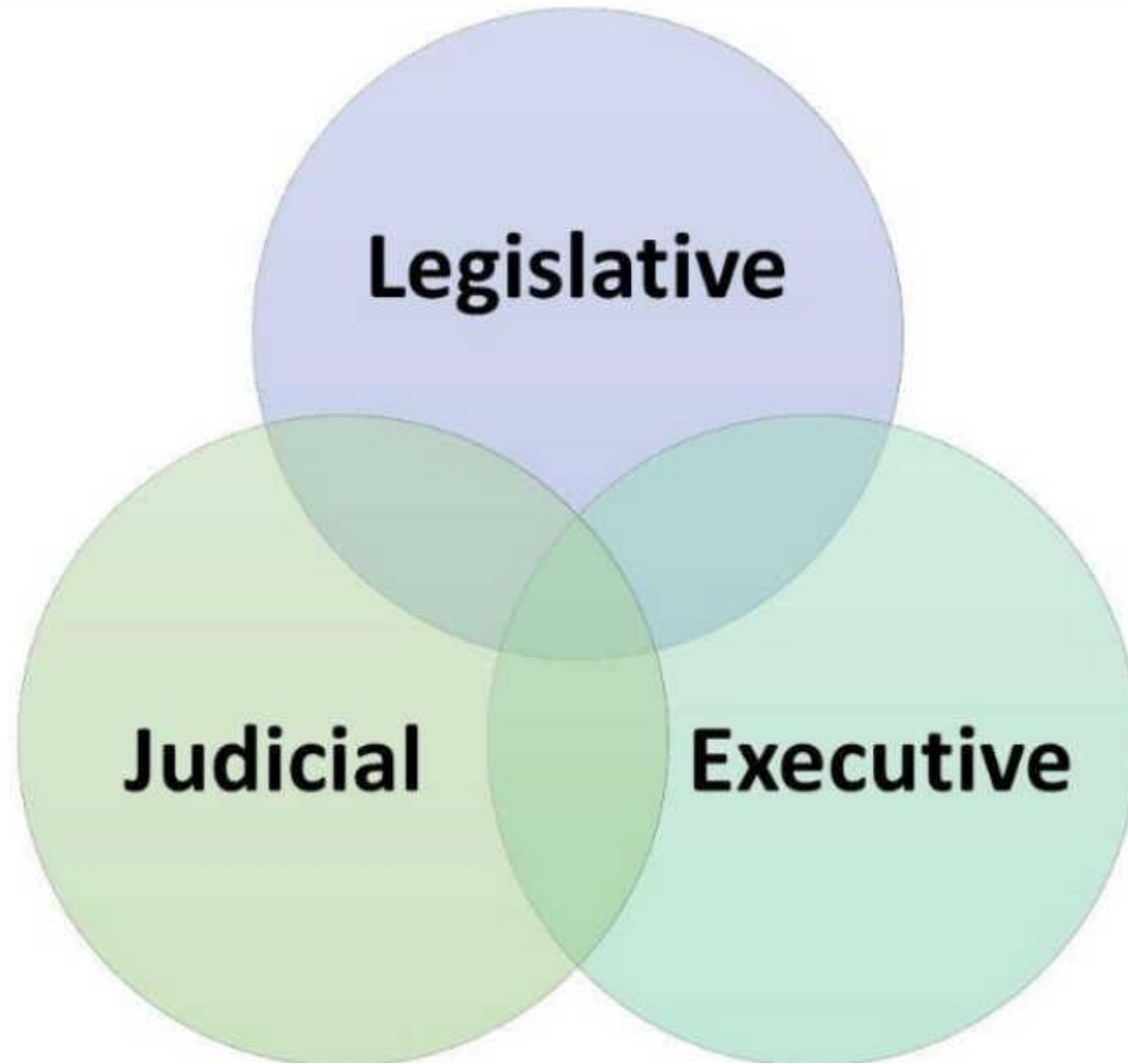
Title IX Coordinator Training

Module 1: Title IX Overview and Application

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Legislation: Title IX

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



Administrative: Title IX Regulations

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

Judicial: Injunctions

Tenn., et. al. v. US Dept. of Educ. (July 15, 2022) – Enjoined DOE and EEOC from implementation of guidance providing disparate treatment protections for individuals based on gender identity and sexual orientation. (Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, and West Virginia)

Texas v. Cardona (June 11, 2024) – Enjoined DOE 2021 guidance on TIX protections on basis of sexual orientation and gender identity. (Texas)



Judicial: Full Injunctions

State of Louisiana, et.al., v. US Dept. of Educ. (U.S. Dist. Ct. WD Louisiana, June 13, 2024)

Plaintiff States: Louisiana, Mississippi, Montana, Idaho

- *Tennessee, et. al., v. Cardona* (U.S. Dist. Ct. E. Dist. Kentucky Northern Div., June 17, 2024)

Plaintiff states: Tennessee, Kentucky, Ohio, Indiana, Virginia, West Virginia

- *Kansas, et. al. v. U.S. Dept. of Educ.* (U.S. Dist. Ct. Kansas, July 2, 2024)

Plaintiff states: Kansas, Alaska, Utah, Wyoming

Title IX in 2024

When Does Title IX Apply?

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

What is the scope of the application of Title IX?

“... be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity”

What is the scope of our education program and activities?

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

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

Disparate Treatment Exemptions

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

TIX Sex-Based Harassment

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

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

2020 Regs

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

2024 Regs

- Building owned or controlled by a recognized student organization
- Conduct subject to school's disciplinary authority
- Even when some conduct contributing to hostile environment is alleged to have occurred outside school's education program or activity or outside U.S.

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

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

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

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

Conduct subject to a school's disciplinary authority

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

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

Does school have
substantial control
over the context

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

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

Hostile Environment Factors

When evaluating the totality of the circumstances to determine whether a sex-based hostile environment exists under a recipient's education program or activity, consider § 106.2 *Hostile Environment Sex-Based Harassment – Factors to be Considered*.

Conduct Outside United States

- No change from 2020 regulations that TIX does not have extraterritorial application. TIX does not apply to sex discrimination that occurs outside of the U.S.
- A recipient is not independently obligated to respond to an incident of sex discrimination that occurs in another country.
- Must still address sex-based hostile environment in program or activity in U.S., even when some conduct alleged to be contributing to the hostile environment occurred outside the U.S.
- Other policies, such as codes of conduct might apply.
 - Clery Act applies even outside of U.S.
 - Title VII applies to U.S. citizens working for a U.S. corporation abroad.

On the basis of sex

2020 Regs

- Deliberately omitted definition of “sex” or “on the basis of sex.”
- 2020 commentary to regs acknowledged that sexual harassment impacted many demographic groups “based on sex, race and the intersection of sex and race (as well as other characteristics such as disability status, sexual orientation, and gender identity).”
- Sexual harassment not tolerated against LGBTQ students.
- Decline to address discrimination on the basis of gender identity.

2024 Regs

- § 106.10: Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy and related conditions, sexual orientation, and gender identity.
- § 106.31: In the limited circumstances in which TIX permits different treatment or separation on the basis of sex, recipient must not carry it out in a manner that discriminates on the basis of sex by subjecting a person to more than *de minimis* harm.
- A policy or practice that prevents a person from participating in a program or activity consistent with the person’s gender identity subjects a person to more than *de minimis* harm on the basis of sex.

Bostock v. Clayton County (2020)

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

What are procedural definitions that apply to Title IX?

- Complainant
- Respondent
- Student
- Student with a disability
- Relevant
- Consent
- Remedies & Disciplinary Sanctions

Definition: Complainant

2020 Regs

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

2024 Regs

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Definition: Respondent

2020 Regs

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

2024 Regs

- A person who is alleged to have violated the recipient's prohibition on sex discrimination.

Definition: Student with a Disability

2020 Regs

- No definition

2024 Regs

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

Definition: Relevant

2020 Regs

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

2024 Regs

- §106.2-Related to the allegations of sex discrimination under investigation as part of the grievance procedures under §106.45, and if applicable §106.46.
- Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and
- Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
- §106.45(b)(7) excludes evidence, even if relevant (confidential employee, medical records, prior sexual conduct)

Definition: Consent

2020 Regs

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

2024 Regs

- Not required to adopt a particular definition of consent with respect to sex-based harassment.

Definition: Remedies

2020 Regs

- No Definitions

2024 Regs

- Remedies: Measures provided, as appropriate to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These are provided to restore or preserve access to the recipient's education program or activity after a recipient has determined that sex discrimination has occurred.
- Disciplinary Sanctions: Consequences imposed on a respondent following a determination that respondent violated TIX prohibition on sex discrimination.

Definitions: Supportive Measures

2020 Regs

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

2024 Regs

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

Role of the Title IX Coordinator

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

Policy Revisions

- Include what applicable regulations require.
- Are they serving the purpose intended?
 - For students, employees, other participants
 - For investigators, hearing panels
- What might be better communicated outside the policy?
- Find the right balance between consistency and discretion.

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