



Title IX, Title VII and the

March 29, 2023

"No person in the United States shall, on

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Scope of Policy

Prohibited conduct occurring:

On campus or off campus

Within context of university program or activity

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Three Categories of Sexual Harassment

There are three categories that meet OCR's definition of sexual harassment and must be reported:

Quid pro quo
Statutory
Hostile environment

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Category 1: Quid Pro Quo

- "Something for Something"
- Threats or rewards in exchange for sexual behavior
- Involves abuse of supervisory authority

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Category 2: Statutory

"Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v)
 "Dating violence" as defined in 34 U.S.C. § 12291(a)(10)
 "Domestic violence" as defined in 34 U.S.C. § 12291(a)(8)
 "Stalking" as defined in 34 U.S.C. § 12291(a)(30)

Conduct that falls within any of these definitions must be reported.

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Consent

- Permission for something to happen or an agreement to do something
- Presence of coercion, intimidation, threats, force, incapacitation absence of consent
- Consent to one form of sexual activity does not imply consent to other forms
- Something to consider: power dynamics and consent

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Category 3: Hostile Work Environment

"Sex based harassment is unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity."
U.S. Department of Education

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NO:

- Prohibitions on participation based on sex
- Unequal funding of athletics
- Discrimination based on pregnancy
- Sexual harassment
(includes sexual assault, stalking, domestic/dating violence)

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A person cannot

Responsible Parties

- Institution
- Responsible Employees

Actual notice of sexual harassment or misconduct

What is actual notice?

- Notice of sexual harassment is given to the Title IX Coordinator or other personnel who have the authority to institute corrective measures

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Responsible Parties, Continued

- **Requires** schools to investigate and address gender based discrimination, sexual harassment, and sexual misconduct.
- Standard: must act in a manner that is not deliberately indifferent
- Under oversight of Title IX Coordinator
- **With few exceptions, ANY employee triggers requirement**
- Exceptions: licensed counselors, clergy, medical professionals

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STOP
REMEDY
PREVENT

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Actual Notice?

LISTEN
INFORM
ACT

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Listen


- No judgment
- Be cognizant of revictimization
- Get just enough information

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- Your obligation – to report
- Option to report to someone who can maintain confidentiality
- Resources: counseling

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Formal Complaint

- Can be filed by Complainant or Title IX Coordinator (risk of substantial harm to community)
- Formal complaint → determination of Title IX applicability
 - If Title IX is not triggered, proceed with investigation pursuant to university's Code of Conduct

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Supportive Measures

- Non punitive, non disciplinary, individualized services to protect safety of parties and educational environment
 - Implemented when report is made
- Offered to both parties (counseling referral, safety planning, academic accommodations, housing accommodations)
- Can include suspension of Respondent on emergency basis

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Investigation

- Investigation requires a formal complaint by complainant or Title IX Coordinator

Investigators
Notice

Standard: ~60 days (but you can set your own)
No prohibition on discussing investigation


Conclusion of investigation: draft investigative report

Parties have 10 business days to review report and submit response

Final report

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Advisors

- Each person is allowed an advisor to be present at all meetings and proceedings
- Advisor cannot answer questions on behalf of advisee or generally cannot act as spokesperson
- Institution must provide advisor at no cost, if requested

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Determination

- Hearing panel/Decisionmaker determines outcome
- Title IX Coordinator is responsible for implementation of sanctions
- Sanctions/corrective actions – suspension, warning, expulsion/termination, psychological assessment, restrictions, revocation of admission/degree – all communicated in writing

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- Either party can appeal a decision

Inappropriate sanctions

Erroneous outcome

Procedural error

- Informal – not all

- **Title IX** prohibits sex based employment discrimination in schools, education programs, and activities that receive federal funding.
 - Governed by: Office for Civil Rights, U.S. Department of Education
 - Bottom line: equal Civil

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Material Differences Between

Standard for Legal Liability

- **Title IX:** deliberate indifference by institution to known acts of discrimination
- **Title VII:** employer did not take prompt and appropriate corrective action; employer negligence in prevention of discriminatory conduct

Jurisdiction

- **Title IX:** schools are required to act when sexual harassment or assault happens in the U.S. within an educational program or activity
- **Title VII:** a school can be held responsible for extra territorial sexual harassment

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Title VII: [conduct that is] "severe, pervasive, or objectively offensive..."


Title IX: [conduct that is] "so severe, pervasive, and objectively offensive..."

Proposed Title IX regulations

Broader definition - investigation under more circumstances
Discrimination based on sex is prohibited if it is "sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively or objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity (Proposed Rule § 106.2).

May 2020 regulations

Narrowed definition
Discrimination based on sex is prohibited only when it is "s.0004Tc(i)TJ/TT11Tf.56320TD0Tc9003>TJ/Tr3>TJ/TT21Tf.22990TD.Discrimination



Balancing Title IX and Title VII

Process claims where actionable
 Learn more information? Adjust course of action accordingly.
 Stop and restart? Yes.

Process claim through Title IX grievance process AND Title VII grievance process as applicable
 Considerations for litigation: timing of filing, available monetary remedies, question of preemption


Bottom line: there is no inherent conflict; comply with both.
U.S. Department of Education

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Bottom line: pursuant to Title VII, employees are pro, o4T212120TD.002Tc87510P25312I0003-87sytyyyf2.52860TD0Tc6427.5di379.17c1118(rim.2404i0014254a29.961116-00.3(f)17.9(o)-3(.22((fo)18.2(r))TJ/TT11TF1.163083TD0Tc8003-TJ)

Bostock parallel
"impossible to discriminate against a person" based on
sexual

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Transgender Student-Athletes in Louisiana


18th state to ban transgender women and girls from participating in female sports
What about transgender men?

Fairness in Women's Sports Act
Became law August 1, 2022
Requires designation of team participants according to biological sex
Application: Public universities and private universities that receive public funds
Allows lawsuits against transgender women who play on female sports teams and protects whistleblowers

Governor John Bel Edwards did not sign or veto bill

State law versus NCAA guidelines

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Title IX Athletic Rule

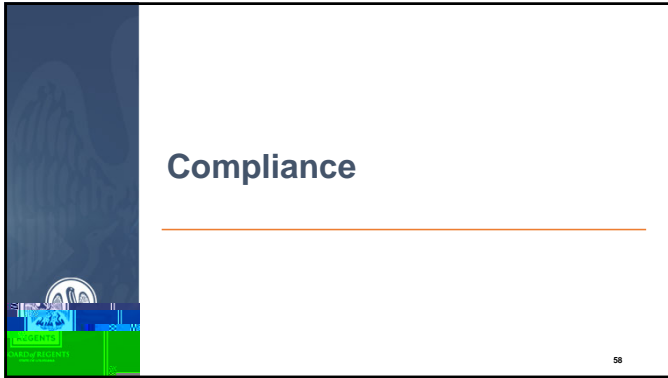
- USDOE stated it would engage in a separate rule making process regarding Title IX and athletics
- No proposed rule yet
- Proposed rule → Notice and comment period >>> Final rule
- Bottom line – it might be a while!

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Protects persons with disabilities within educational institutions

"Person with a disability means a person with a physical or mental impairment that substantially limits a major life activity; has a record of a disability"

lawsuits

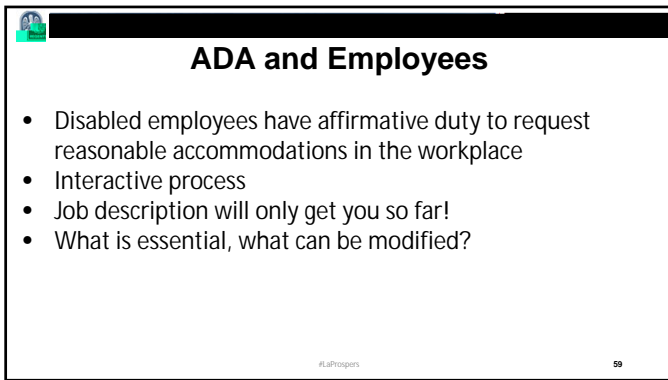


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Compliance

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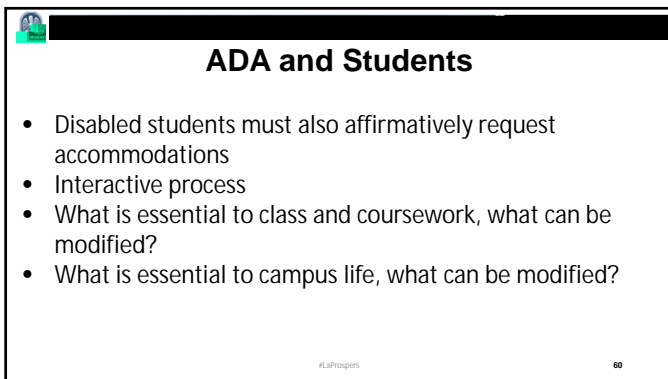
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ADA and Employees

- Disabled employees have affirmative duty to request reasonable accommodations in the workplace
- Interactive process
- Job description will only get you so far!
- What is essential, what can be modified?

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ADA and Students

- Disabled students must also affirmatively request accommodations
- Interactive process
- What is essential to class and coursework, what can be modified?
- What is essential to campus life, what can be modified?

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Service Animals & Emotional Support Animals

Emotional support animal **B** Service animal


Emotional support animals

- Often used in furtherance of medical treatment
- Not considered service animals
- Not limited to dogs
- Are not specially trained to perform tasks for the benefit of people with disabilities
- Not covered by federal law

Service animal definition (Title II and III)

- A dog that is trained to work for the benefit of an individual with a disability of any kind.
- Limited to dogs, generally (exception: miniature horses)

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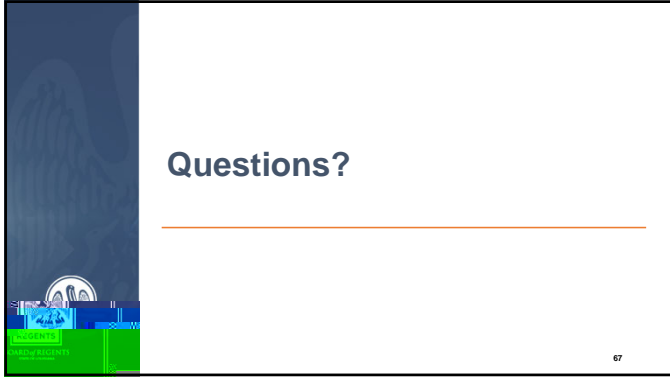
Service Animals

- Not required to be professionally trained
- Must be fully trained, cannot be in training
 - Educational institutions cannot ask for proof of certification documentation as a condition for animal's entry
- Service animals are not required to wear identification
- Educational institutions are not required to supervise or care for service animals
- Staff may ask if dog is a service animal, is required because of a disability, and what work the dog has been trained to perform
 - NOT permitted: requesting documentation for the dog, requesting the dog demonstrate work, or requesting information about the disability

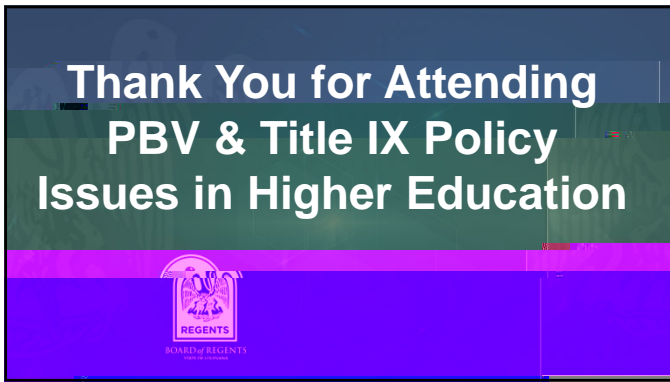
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- Legitimate safeTc@iBT/TTTD:002arg42.991Tf.221306331.M830T1.1Tf.237842.9325.6225i69031Tf.2378m.6230.2378nt:001:002Tc[(anima50T8TD:0

- Fair Housing Act (FHA) applies to dormitories and student housing facilities
- Assistance animal = service animal or emotional support animal
 - Does not have to be trained to perform a specific task
 - Can provide emotional support that alleviates one or more identified symptoms or effects of a person's disability



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