

Association of Title IX Administrators

Title IX Coordinator Two: Additional Topics for New and Experienced Coordinators

Training & Certification Course

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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 legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

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.

ATIXA 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.

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AGENDA

1. Coordinator One Review
2. Assessing Your Existing Program
3. Policy Management
4. The Clery Act and Annual Security Reporting
5. Programming and Prevention Efforts
6. Introduction to Climate Assessment
7. Dual Responsibilities: Title IX and Section 504 Coordinator

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AGENDA

8 Pregnant and Parenting Students

9 Minors and Title IX

10 Introduction to Title IX and Athletics

11 Sexual Orientation, Gender Identity, and Gender Expression

12 Technological Abuse and Cyber Harassment

13 Introduction to Trauma-Informed Practices

14 Final Planning

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TITLE IX NOTICE OF PROPOSED RULEMAKING 2022

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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 date[1]
- 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

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[1] U.S. Office of the Federal Register, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,* https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal

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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

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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

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COORDINATOR ONE REVIEW

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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/ATP
  - Respondent is under your control
  - In a Program or Activity of your institution
  - Falls under definitions of Section 106.30

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THE IX COMMANDMENTS

INVESTIGATION (plus **prompt** & **fair** per VAWA Sec. 304)	**Thorough**	**Reliable**	**Impartial**
PROCESS	**Prompt**	**Effective**	**Equitable**
REMEDIES	Act reasonably to stop discrimination	Act reasonably to prevent recurrence	Act equitably to remedy effects

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THE PROCESS

Incident	Initial Assessment	Formal Investigation & Report	Hearing	Appeal
• Complaint or Notice to TIXC	*Following a formal complaint* • Jurisdiction • Dismissal? • Policy violation implicated? • Emergency Removal? • Reinstatement to another process? • Informal or formal resolution?	• Notice to Parties • Identification of witnesses • Interview scheduling • Evidence collection • Report drafted • Evidence & report shared • Investigation report finalized	• Determination • Cross-examination • Sanction? • Remedies	• Standing? • Vacate? • Remand? • Substitute?

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DISCUSSION

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

- What types of issues are you seeing at your institution?

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COMMITMENT BEYOND COMPLIANCE

- Industry standards = the floor; Best practices = the ceiling
- Statutes, case law, and federal regulations set the floor
- Some states have laws which exceed federal requirements and do not conflict with the Title IX regulations
  - Where they do conflict, the regulations control
- Aiming for the floor = doing the bare minimum
  - Will continue the cycle of inequity and unfairness; activists won't stand for it
  - Civil Rights issues demand a commitment to justice and fairness

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ASSESSING YOUR EXISTING PROGRAM

- Structuring Your Team
- Evaluating Your Team
- Leveraging and Empowering TIXC Authority

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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)

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ADDITIONAL CONSIDERATIONS: TITLE IX TEAM STRUCTURE

- Title IX Teams can be as small as five people, but will commonly be larger:
  - TIXC + 3-5 deputies (Compliance & Coordination Team)
  - **Institutions of Higher Education** (Grievance Process Team)
    - 2-4 Investigators
    - 4-5 Decision-makers (panel + alternates)
    - 1-3 Appeal Decision-makers
    - 1-3 Informal Resolution Facilitators
    - 4-6 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

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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
  - Trained in an unbiased fashion
  - Neutrality in title, office location/department, supervisory responsibilities, supervisor
  - Non-partisan (in terms of the grievance process)

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ADDITIONAL CONSIDERATIONS: DEPUTY COORDINATORS

- Not required by Title IX
  - May be a good practice to designate multiple Deputy Coordinators particularly for larger school districts, colleges, and universities
    - Some Recipients have found that designating a Deputy Title IX Coordinator for each building, school, or campus provides students and staff with more familiarity with the Title IX Coordinator
    - Familiarity may result in more effective training of the school community on their rights and obligations under Title IX and improved reporting of incidents under Title IX

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ADDITIONAL CONSIDERATIONS: DEPUTY COORDINATORS (CONT.)

- A Recipient that designates multiple Deputy Coordinators **should designate one lead Title IX Coordinator who has ultimate oversight responsibility**.
  - Recipient should encourage all of its Deputy Title IX Coordinators to work together to ensure consistent enforcement of its policies and Title IX

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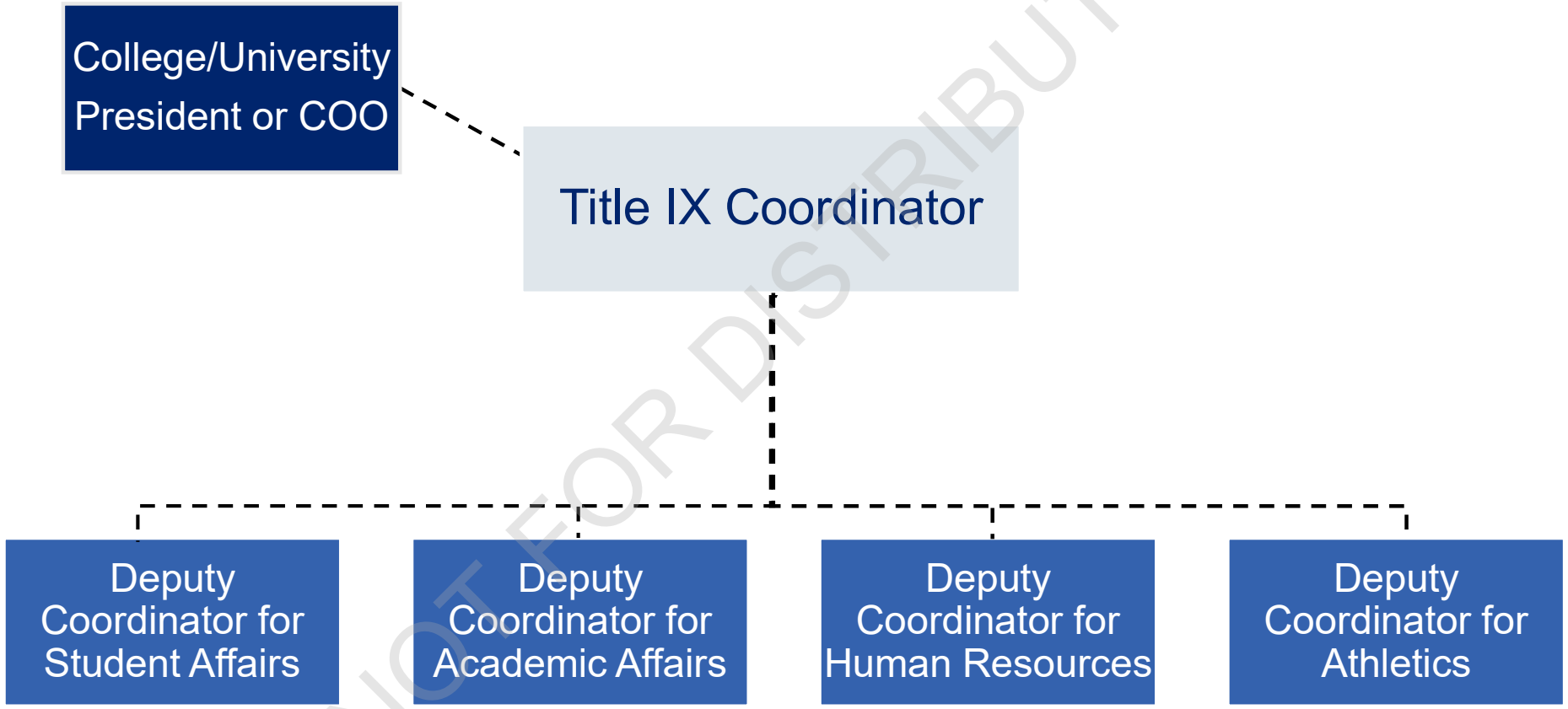
FACTORS TO CONSIDER WHEN STRUCTURING YOUR TEAM

- Individuals' normal workload and availability
  - Heavy workload = less availability
  - Consider individuals who have more availability
  - Tenured-track faculty vs. tenured faculty
  - Staff
- Inherent conflict of interest or bias
  - Nature of their research and expertise
  - Victim's advocates
- Social media postings
- Primary role at the institution
- Social group memberships
- Volunteer affiliations and organizations

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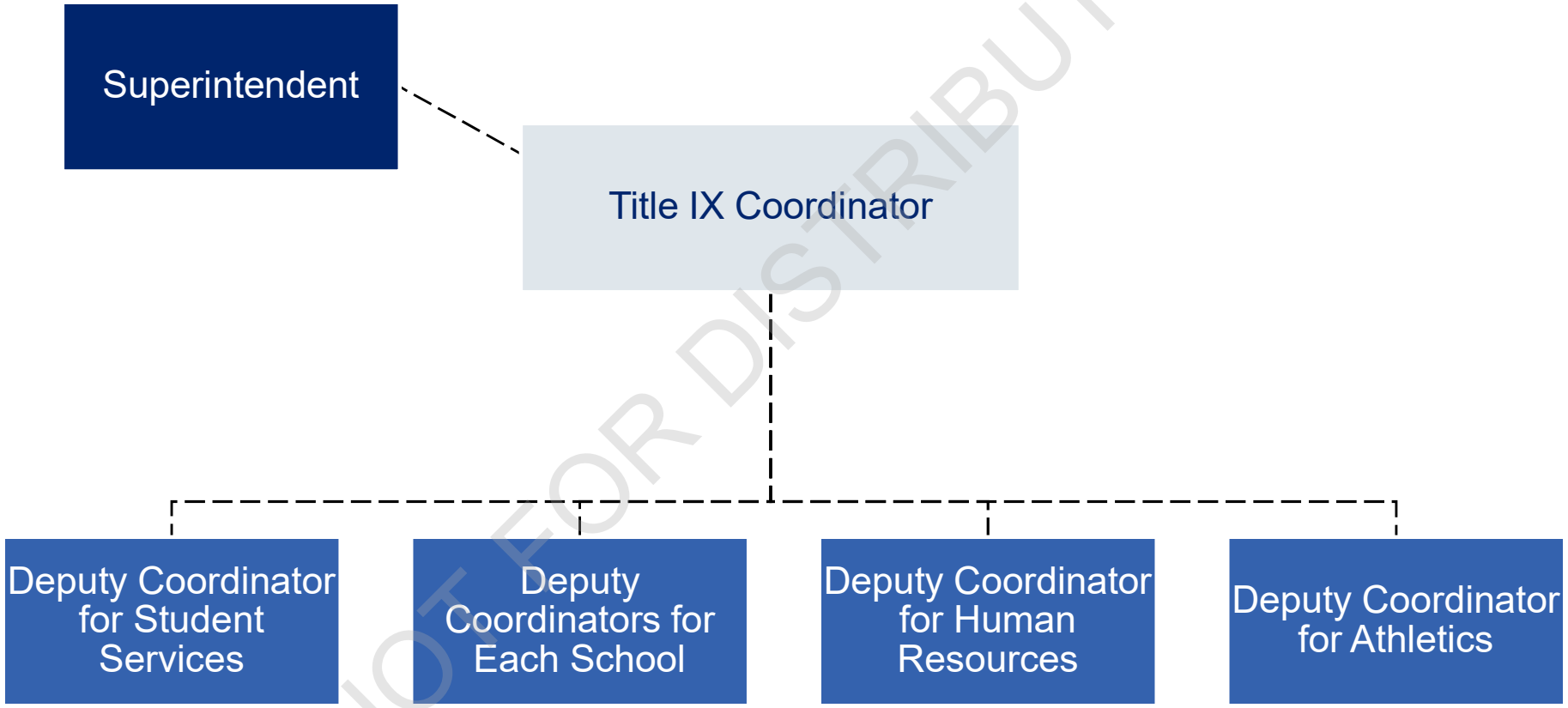
SAMPLE TITLE IX COMPLIANCE TEAM STRUCTURE - HIGHER EDUCATION



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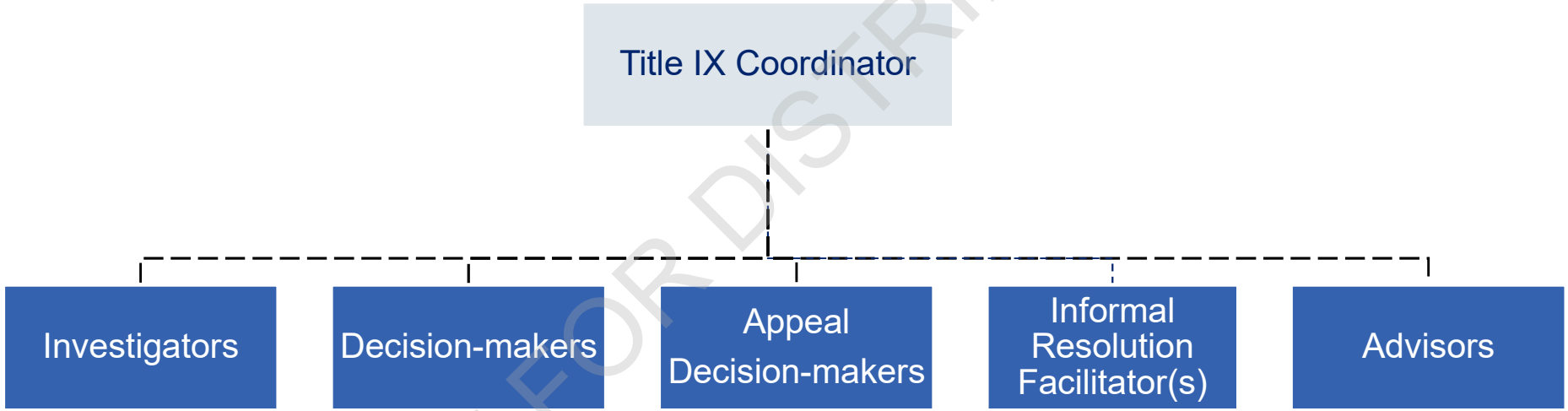
SAMPLE TITLE IX COMPLIANCE TEAM STRUCTURE – K-12



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SAMPLE TITLE IX GRIEVANCE PROCESS TEAM



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TITLE IX 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
- Dual-enrollment oversight
- Investigator oversight
- How is your campus/district/school structured?

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TITLE IX EXTENDED TEAM

- Include key constituencies not represented on core team
  - Legal Counsel
  - Public Safety/Campus Police/School Resource Officer
  - School Counselors/Counseling Center
  - Residence Life
  - Fraternity and Sorority Life/Student Activities
  - Prevention Services/Health Educators
  - Student Health
  - Others
- Regular meetings and coordination
- Training and programming
- Interaction with behavioral intervention team (BIT)

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EVALUATING YOUR TEAM

- Mental health check-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?

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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?

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TITLE IX TEAM DISCUSSION QUESTIONS

- What does your core team look like?
  - Structure
  - Roles and functions
- What does your extended team look like (if applicable)?
- What is working?
- What is not working?
- What would improve your team(s) and its/their functioning?

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CASE STUDY

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CASE STUDY PART I

- Gianna and Jeremy were both first-year students at Poe College. One night they both attended an on-campus party in a residence hall. Gianna drank two to three cups of wine, two to three shots of tequila, and a mixed drink of Sprite and vodka that contained three shots of vodka, both before the party and within an hour of arriving at the party.
- After leaving the party, Gianna and Jeremy decided to walk back to Gianna's residence hall where they engaged in vaginal sexual intercourse. Midway through the sexual encounter, the condom broke, and Jeremy ceased penetration. Jeremy informed Gianna that the condom broke, told Gianna that he would purchase the morning after pill for her the next morning, and then he left. Gianna was later found on the residence hall bathroom floor by another student and alleged that she was raped.

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CASE STUDY PART I (CONT.)

- Gianna framed 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 couldn't 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.

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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?

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CASE STUDY PART II

- The investigator amended the investigation report to include information about Gianna's alcohol consumption.
- The investigators recommended that Jeremy be found not responsible for a policy violation based upon the original framing of the complaint.
- The hearing panel was comprised of four College employees who had been trained by the Title IX Coordinator in Title IX and hearing procedures.
- Gianna requested that the student who found her on the bathroom floor the night of the incident and the RA she spoke to be allowed to testify to the panel. The panel declined this request. Gianna also requested an expert witness to discuss the effects of alcohol and Adderall on the body, and that too was denied.

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CASE STUDY PART II (CONT.)

Questions:

- As the Title IX Coordinator, how would you respond to this situation?
- What if Gianna does **not** appeal the decision?
- Is there additional training to provide to the Title IX Team?

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LEVERAGING AND EMPOWERING TIXC AUTHORITY: VISIBILITY

Students

- Attend meetings
- Connect with student leaders
- Consider ways to include students in program planning and trainings
- Establish trust
- Communicate honestly, openly, and clearly
- Never make promises

Colleagues

- Attend meetings
- Connect with teacher/faculty leaders
- Schedule focus groups
- Keep open door policy
- Steer away from "principal office" mentality
- Establish trust
- Partner and collaborate

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LEVERAGING AUTHORITY (CONT.)

The power of collaboration

- Senior Administrators:
  - Can help enforce training attendance/completion
  - Provide additional resources
- Academic Affairs:
  - Incorporating aspects of TIX education into curriculum
  - Classroom presentations
  - Inclusive library collections
  - Can be members of your TIX team
- Student Affairs:
  - Student programming
  - Peer-to-peer training
  - Support services
- Business Affairs:
  - Grant funding
- Legal Counsel:
  - Policy
  - Procedures
  - Review reports/complaint documents
  - Response to subpoenas, lawsuits, OCR complaints

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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?

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POLICY MANAGEMENT

- Creating and Implementing Appropriate Policy
- Publication Requirements
- Coordinating the Overlap of Multiple Policies
- Taking inventory of Existing Policies

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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.

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PUBLICATION REQUIREMENTS

- Students and employees should **know policy exists, how it works, and how to file a complaint**
- 2020 TIX 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

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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

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COORDINATING THE OVERLAP OF MULTIPLE POLICIES

- Coordination Responsibilities
- Sources of Policy Requirements
- Taking "Inventory"
- Policy Management Tips

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COORDINATION RESPONSIBILITIES

- If the institution has multiple policies and procedures (for faculty, staff, students), the institution must ensure that these policies are not conflicting, or do not contain conflicting definitions
  - A strong argument for a single policy!
    - ATIXA's One Policy, Two Processes Model (1P2P)
- Remember live hearings are required for institutions of higher education under Title IX for all sexual harassment formal complaints. This includes faculty, staff, and student sexual harassment complaints.

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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

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COORDINATING THE OVERLAP OF VARIOUS POLICIES AND PROCEDURES

- Board-level Policy
  - e.g., Equal Opportunity/Non-Discrimination Policy
- Board-level Administrative Procedure
  - e.g., Harassment Grievance Procedures
- Employment/Human Resources Policy and Procedures
- Employee/Staff/Faculty Handbooks
- Student-level Policy and/or Procedures
  - e.g., Conduct Code
- Student/Parent Handbooks
- Informal protocols
  - e.g., interaction with campus police/public safety, search processes

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TAKING "INVENTORY"

Are all of these "policy sources" consistent with each other?

- Harassment and Discrimination policies and procedures (required by Title IX, often required under state law)
- Anti-bullying/cyberbullying policy (often required under state law)
- Transgender and Gender Expansive Student policy/procedures
- Staff conduct code/HR policies and procedures
- Staff conduct with students
- Collective Bargaining Agreements
- Employment Contract terms

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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

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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)

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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

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CLERY/VAWA COMPONENTS

- Educate students, faculty, and staff on the prevention of sexual assault, domestic violence, dating violence, and stalking
- Intersects with Title IX and Clery requirements and obligations
- Institutional disciplinary procedures shall "provide a **prompt, fair and impartial** investigation and resolution."
- Added significant requirements to the content of the Annual Security Report (ASR)
  - e.g.: victim services & remedies, policy definitions

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THE CLERY ACT AND ANNUAL SECURITY REPORTING

- Annual Security Report Requirements
- Timely Warnings and Emergency Notifications
- Training, Policy, and Procedure Requirements

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THE CLERY ACT

- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f))
  - Jeanne Clery was raped and murdered in her residence hall room at Lehigh University – prompted legislation
  - Originally passed in 1990 as the "Student Right-to-Know and Campus Security Act"
    - Amended in 1992, 1998, 2008 by Higher Education Act reauthorization
    - Amended in 2013 by VAWA Reauthorization

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CLERY ACT: 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 34 CFR 668.46(a)
  - Note: Clery geography and Title IX jurisdiction are separate and overlapping

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CLERY ACT:
ANNUAL SECURITY REPORT (ASR)

Reports of Clery Crimes:

- Criminal Homicide
- Robbery
- Burglary
- Arson
- Aggravated Assault
- Motor Vehicle Theft
- Liquor Law Violations
- Drug Law Violations
- Illegal Weapons Possession
- Rape/Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking
- Fondling
- Incest
- Statutory Rape
- All Hate Crimes

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CLERY ACT: ANNUAL SECURITY REPORT REQUIRED CONTENT

Policies

- Regarding alcoholic beverages and underage drinking
- Regarding illegal drugs and applicable state and federal laws
- Missing student notifications
- Procedures for reporting criminal actions or other campus emergencies
- Security of and access to campus facilities
- Enforcement authority of security personnel

Programs

- Substance abuse
- **DV/DV, 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/DV, sexual assault, or stalking is reported**

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ANNUAL SECURITY REPORT: HATE CRIME CATEGORIES

Categories of prejudice – actual or perceived:

- Race
- Gender
- Religion
- Sexual orientation
- National origin
- Gender identity
- Ethnicity
- Disability

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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

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POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include (Cont.):

- Victim's options to notify (may also decline to notify)*
  - Law enforcement (campus and local)
  - Campus authorities
- Written notification to students and employees about existing services for:
  - Counseling
  - Health
  - Mental health
  - Victim advocacy
  - Legal assistance
- Other services available for victims
  - Both on campus and in the community

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*Some states require law enforcement reporting if the institution is aware of an incident of sexual assault

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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
- If reasonably available and irrespective of whether the Complainant chooses to report to campus or local law enforcement

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POLICIES & PROCEDURES: COMPLAINANT SERVICES

Policy statements in the ASR must include (Cont.):

- Rights of Complainants and institutional responsibilities regarding protective measures issued by a criminal or tribal court, including:
  - Orders of protection
  - No contact orders
  - Restraining orders
  - Similar lawful orders
- Possible sanctions or protective measures that [an] institution may impose following a final determination of an institutional disciplinary procedure regarding:
  - Domestic violence
  - Dating violence
  - Sexual assault
  - Stalking

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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
  - VAWA 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

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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

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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

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VAWA 2013: ANNUAL TRAINING REQUIREMENTS

- Annual training for officials involved in investigating and/or resolving complaints:
  - **The four types of misconduct**: Domestic violence, Dating violence, Sexual assault, and Stalking
  - **How to conduct an investigation** "that protects the safety of victims and promotes accountability."
  - **How to conduct a "hearing process** that protects the safety of victims and promotes accountability."
  - Important to follow Title IX regulations with respect to training topics
  - Make sure training materials are neutral

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PROGRAMMING AND PREVENTION EFFORTS

- VAWA Educational Programs and Campaigns
- Prevention Education and Training Checklist
- Risk Reduction

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VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- 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

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VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Must be directed at **all incoming students** and **new employees**
  - No requirement that all take or attend, but an attendance/completion mandate is encouraged
  - Institutions **must** make a "good-faith effort" to reach all incoming students and all new employees
    - Requires "active notification of the training's availability and providing the training in a format and timeframe that encourages and allows for maximum participation." (34 C.F.R. § 668.46)
    - Means of delivery (in-person, theatrical, online videos, online interactive) can vary depending "on the circumstances of your community." (34 C.F.R. § 668.46)

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VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Programming 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 (34 C.F.R. § 106.30) 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

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TITLE IX/VAWA SEC. 304 PREVENTION EDUCATION & TRAINING CHECKLIST

Trainee Populations:

- Title IX Team Members
  - TIX Coordinator and Deputies, Investigators, Decision-Makers, Advisors, and Informal Resolution Facilitators
- First Responders
  - resident assistants, health center employees, counselors, academic advisors, victim advocates, and public safety/police
- Officials With Authority (OWAs) and Responsible Employees/Mandatory Reporters
- All Faculty & Staff
- All Students

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RISK REDUCTION

- Programming should include "information on risk reduction." (34 C.F.R. § 668.46)
  - Defined as options designed to:
    - Decrease perpetrations and bystander inactions
    - Increase empowerment for victims in order to promote safety
    - Help individuals and communities address conditions that facilitate violence

Note: Information about risk reduction must not be presented in a manner that encourages victim blaming

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INTRODUCTION TO CLIMATE ASSESSMENT

- Climate Surveys
- Annual Case Analysis

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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

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CLIMATE SURVEYS (CONT.)

- Climate surveys are something we *get to do*, not something we should fear.
- Effective climate surveys shed light on areas of our institutions that need improvement. Think of them as a bridge inspection or elevator inspection; they offer critical data so we can improve and ensure safety.
- In a perfect world with no funding limitations and an aspirational focus, climate surveys should be offered to three groups: faculty/teachers, staff, and students.
- Each survey would have slightly different questions to assess the particular group's experience with sexual harassment, sexual assault, stalking, and dating/domestic violence

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CLIMATE SURVEY STAGES



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SURVEY STRUCTURE

- The first step in the development of a climate survey is understanding who you are surveying
  - Demographic questions provide the ability to narrow results by hundreds of additional categories and comparisons (if you choose)
  - Demographic questions can't be asked retrospectively
  - Ensure the survey includes all demographic questions you want to know about those completing the survey before implementation
    - Consider which statistics are typically requested (e.g., year, gender, gender identity, race, student-athlete status)

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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

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CLIMATE SURVEYS: TOPICS

- ATIXA 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

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Learn more in ATIXA's Coordinator Four Course!

ONLINE SURVEY TOOL FOR CAMPUS SAFETY (2022 VAWA REAUTHORIZATION LAW)

- The Secretary of Education shall develop, design, and make available through a secure and accessible online portal, a **standardized online survey tool** regarding **postsecondary student** experiences with domestic violence, dating violence, sexual assault, sexual harassment, and stalking.
- The survey tool shall be fair and unbiased, be scientifically valid and reliable, meet the highest standards of survey research, and notify the participant that anonymized results of the survey may be published.
- The survey must be accessible for individuals with disabilities.

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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

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ONLINE SURVEY TOOL FOR CAMPUS SAFETY (CONT.)

- what response was received, what actions were taken, and the outcome of the matter if a victim reported an incident to different entities
- contextual factors, such as whether force, incapacitation, or coercion was involved
- institutional affiliation of the respondent, if any
- whether a victim reported an incident to Federal, State, local, Tribal, or campus law enforcement
- the impact of domestic violence, dating violence, sexual assault, sexual harassment, and stalking on the victim's education
- the impact and effectiveness of prevention and awareness programs and complaints processes

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ONLINE SURVEY TOOL FOR CAMPUS SAFETY (CONT.)

- attitudes toward sexual violence and harassment, including the willingness of individuals to intervene as a bystander
- other questions, as determined by the Secretary of Education

- An institution of higher education may request, at no cost to the institution, to add additional questions that would increase the understanding of the institution of school climate factors unique to the campuses affiliated with the institution.

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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 institution 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

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ANNUAL COMPLAINT ANALYSIS



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ANNUAL COMPLAINT ANALYSIS

- Consistent with data provided for the ASR
- Some systems provide automatic report creation
  - e.g., Maxient, Advocate, Guardian, etc.
- Can assist in prevention and program planning for new and returning students each year
- Informs 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

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KEY TAKEAWAYS

- Climate surveys, institutional, assessments, and annual complaint analyses can provide rich data that can:
  - Help improve the student and employee experience
  - Assist the Title IX Coordinator in making more informed prevention and programming decisions
  - Provide the Title IX Coordinator with strengths and weakness of their Title IX program
  - Provide potential solutions to concerns such as low reporting numbers, low program participation, etc.
  - Strengthen the argument for additional resources
  - Allow the institution to be more strategic in its approach to compliance

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DUAL RESPONSIBILITIES: TITLE IX & SECTION 504 COORDINATOR

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SECTION 504

"No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 704(a) Promulgation of nondiscriminatory rules and regulations

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504 COORDINATOR OR DISABILITY SERVICES COORDINATOR

Accessibility/Disability Services Coordinator

- Verification of the intake of requests for accommodations
- Engaging in the interactive process
- Identifying with the student or employee appropriate accommodations
- Serving as liaison with faculty and supervisors

504/ADA Coordinator

- Publication of non-discrimination notice
- Oversight of the grievance process
- Investigation of grievances

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SIMILARITIES BETWEEN TITLE IX AND 504 COORDINATOR

Title IX Coordinator

- Ensure compliance with requirements related to sex-based discrimination
- Publication of non-discrimination notice
- Oversight of the grievance process
- Investigation of grievances

504/ADA Coordinator

- Ensure compliance with requirements related to disability-based discrimination
- Publication of non-discrimination notice
- Oversight of the grievance process
- Investigation of grievances

Can it be the same person? Should it be the same person?

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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

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Learn more in ATIXA's Section 504/ADA Course!

PREGNANT AND PARENTING STUDENTS

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TITLE IX AND PREGNANCY

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

"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 educational program or activity receiving federal financial assistance."



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.

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“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.”

34 C.F.R. § 106.40

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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 G.E.D. or a diploma."

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

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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." (34 C.F.R. § 106.40)

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WHO IS COVERED UNDER TITLE IX PREGNANT AND PARENTING STUDENT REGULATIONS?

- Students who become pregnant, terminate a pregnancy, or give birth during an academic school year
- Title IX regulations apply to pregnant students for as long as deemed medically necessary by the student's health care provider
  - These protections are not indefinite

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WHO IS COVERED UNDER TITLE IX PREGNANT AND PARENTING STUDENT REGULATIONS? (CONT.)

- Pregnant and parenting protections under Title IX can apply equally to the other parent of the child
  - Example: If your school or institution allows time for females to bond with or care for their children, this should apply to males and non-binary or trans* individuals as well.
  - This does not mean that if a pregnant individual is placed on bed rest and thus must miss classes for a day (which must be excused per Title IX protections), that the other parent would also have an excused absence.

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PREGNANCY & TITLE IX

- June 2007 “Dear Colleague Letter”
- June 2013 DCL on Pregnant and Parenting Students
- Regulatory Language
- Case Discussion

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THE OCR, 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

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THE OCR, TITLE IX, AND PREGNANCY (CONT.)

June 25, 2007 "Dear Colleague Letter"

- Affirms the application of the pregnancy-related portions of the regulations to athletic departments and summarized a school's obligations to pregnant student-athletes
- The June 25, 2007 DCL also includes:
  - Information on how to develop programs to support these students
  - An overview of students' rights under Title IX
  - Guidance on how to submit a complaint if an individual feels their rights are not being met

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THE OCR, TITLE IX, AND PREGNANCY (CONT.)

June 25, 2007 "Dear Colleague Letter"

- Although the pamphlet is focused on secondary education, the DCL states that "legal principles apply to all recipients of federal financial assistance, including postsecondary education."

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PREGNANCY & TITLE IX

June 25, 2013 DCL on pregnancy and parenting students:

- Educators must ensure pregnant and parenting students are **not discriminated against**
- Educators must ensure that pregnant and parenting students are **fully supported in preparation for graduation and careers**
- Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX

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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."** (34 C.F.R. § 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."

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PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Pregnancy as a Temporary Disability

- "A Recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity."
  (34 C.F.R. § 106.40)

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PREGNANCY & TITLE IX: OCR 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." (34 C.F.R. § 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**."

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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**." (34 C.F.R. § 106.40)

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PREGNANCY & TITLE IX: OCR GUIDANCE

Leave Policies (Cont.)

- "When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving she the opportunity to make up any work missed."
- "A school may offer the student alternatives to making up missed work, such as:
  - Retaking a semester
  - Taking part in an online course credit recovery program
  - Allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave
- The student should be allowed to choose how to make up the work."

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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, student must be given an opportunity to make those points up, if missed, due to pregnancy or childbirth

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PREGNANCY & TITLE IX: HARASSMENT PROTECTIONS

- Recipients must protect pregnant students from harassment based on sex
  - This includes harassment because of pregnancy or pregnancy-related conditions
- Conduct that is sufficiently severe, pervasive, and objectively offensive is prohibited and must be addressed under the Recipient's sexual harassment adjudication process. Conduct can include:
  - Sexual comments or jokes about student's pregnancy
  - Sexually-charged named calling
  - Spreading rumors about sexual activity
  - Sexual propositions or gestures

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PREGNANCY & TITLE IX: POLICY AND PROCEDURE REQUIREMENTS

- Develop and annually distribute a policy prohibiting sex discrimination that includes prohibited discrimination against pregnant and parenting students
- Adopt and publish grievance procedures for students to file a complaint of sex discrimination that includes discrimination related to pregnancy or parental status
- Students and employees should be aware that the Title IX Coordinator also holds the responsibility of overseeing complaints of discrimination against pregnant and parenting students

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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 discrimination allegation
  - Consider whether the pregnancy is creating a temporary disability/504 analysis and referral
  - Make sure website(s) describe the iterative process

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ATHLETICS, PREGNANCY, AND TITLE IX

NCAA Guidance

- A pregnant student-athlete's physician 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 to allow continued team participation
- Pregnant student-athletes cannot be harassed due to pregnancy
- A student-athlete whose athletic career is interrupted due to a pregnancy-related condition will typically be entitled to a waiver to extend their athletic career

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Source: NCAA, Pregnant and Parenting Student-Athletes

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CASE STUDY

- Siri

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CASE STUDY: SIRI

- Siri, a nursing student, is in her third trimester of pregnancy and her final year of nursing school. Siri is completing her clinical hours with the university-affiliated medical school when the Director of the medical school, who also oversees nursing students, phones you to inform you that Siri will need to stop participating in her clinical experience until after she gives birth.
- The Director explains that Siri will have to lift patients, stand for long hours, and oftentimes miss a meal during a shift--all of which pose risks to her and her unborn baby and put the medical school and the program at liability risk.

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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 VISA 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?

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SPECIAL TOPICS

- Nursing rooms, mothers' lounges, etc.
- Residence halls
- Labs, chemicals, exposure to diseases, etc.
- Cohort programs
- Licensure requirements
- Online learning/homebound instruction
- Childcare

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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

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RESIDENCE HALLS

- Not required to change occupancy policies for any residence hall on your campus
- Upon birth of child, Recipient can move the student to housing more appropriate for parenting students, if applicable
  - Not required to pay for housing of parenting student if institution does not offer family housing
- Pregnant students are required to have equal access to housing and cannot be discriminated against, regarding housing, during their pregnancy
  - Example: A student with a roommate becomes pregnant. Pregnant student develops morning sickness, which causes vomiting often. The roommate wants the school to move the pregnant student to another room because of the vomit.

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LABS, CHEMICALS, EXPOSURE TO DISEASE, ETC.

- Reasonable restrictions for health and safety (as determined by a physician) are permitted
- No one at the institution/school is permitted to make this decision on behalf of pregnant student
- Cannot force a pregnant student to restrict themselves from the class, lab, or exposure. Can recommend, but not force.
- Cannot impose penalties for a pregnant student who decides to restrict themselves
- Cannot require a doctor's note from pregnant student, if it is not required for other students

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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 coursework 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.

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CASE STUDY

- Sasha

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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 II 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.

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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 Alexa 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 considered of educational quality, and for it to count towards the student's degree requirements.

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CASE STUDY DISCUSSION: SASHA

- Rehearsals take place one day per week for six hours each session. Missing one rehearsal is the equivalent of missing three weeks of course material.
- Sasha's three absences have significantly impacted the others involved in the productions, including other students not having the ability to rehearse scenes with her, which has in turn decreased their total number of rehearsal hours.
- Sasha tells you that she has been rehearsing during the weekends with her scene partners and knows her lines despite missing the three class periods.

What do you do as Title IX Coordinator?

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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
- May be appropriate to offer to other parent if this falls under Recipient's leave policy

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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

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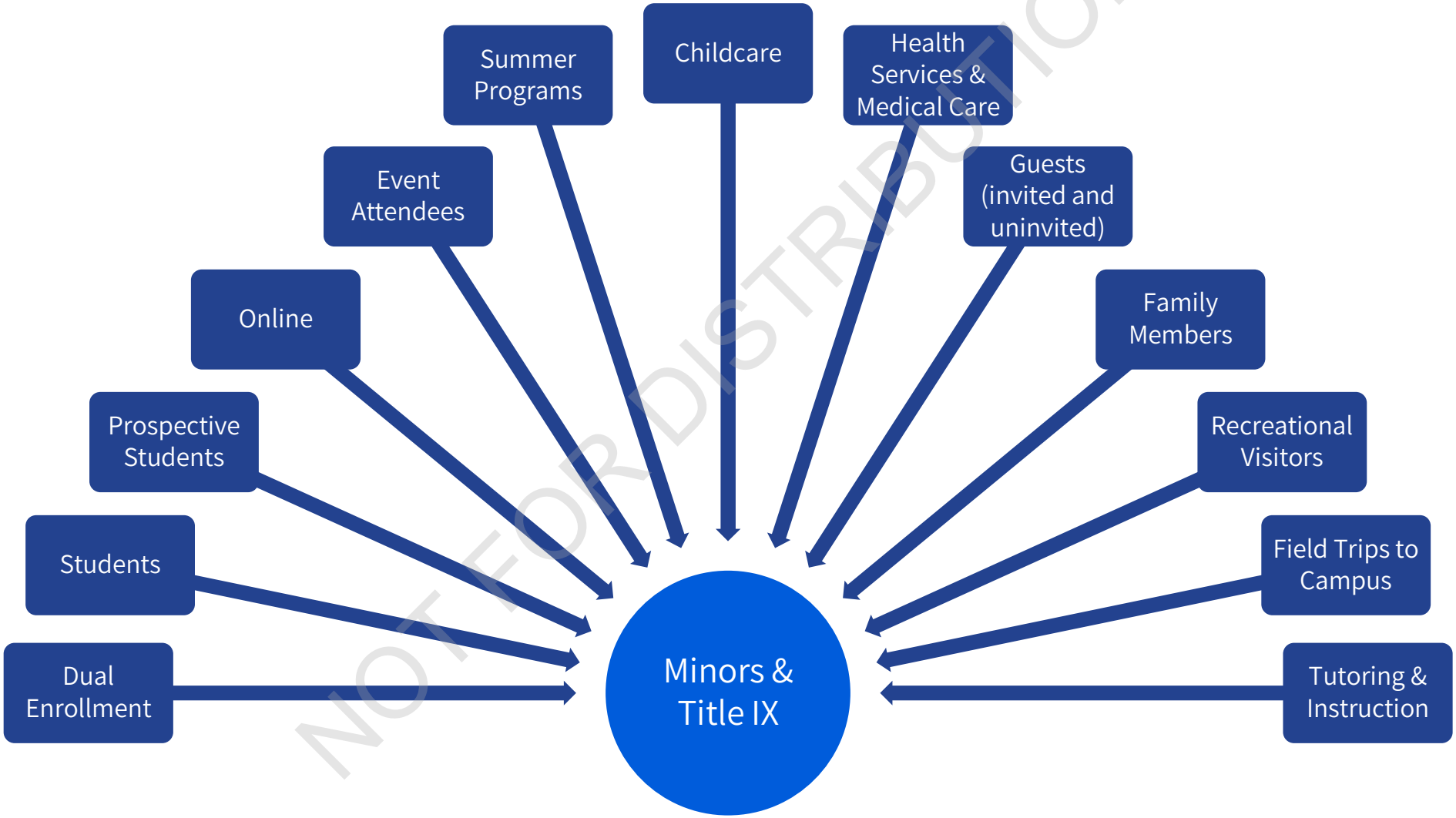
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MINORS AND TITLE IX

- Minors on Campus
- Operative Questions
- Sample Policy
- Dual Enrollment
- Abuse Prevention
- More Concerns

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MINORS AND TITLE IX



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MINORS AND TITLE IX (CONT.)

- Minors as students
  - K-12: Nearly all elementary and secondary education students
  - Higher Education: Students under the age of 18 may enroll full- or part-time in college. When they do, FERPA rights shift from their parents/guardians to them, and privacy protections attach to their education records.
- When are they your "students?"
  - Dual enrollment?
  - Summer break?
  - K-12 school on college campus?
  - Continuing education?
  - Recruits?
  - On-campus childcare facilities?

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MINORS AND TITLE IX: SOME OPERATIVE QUESTIONS

K-12

- Range of ages is of key importance
- Whose student are they between elementary, middle, and high school?
- Who is responsible for them?
- Who is training those responsible?
  - Mandatory reporting
  - Parental/guardian notification
  - Age of consent laws

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MINORS AND TITLE IX: SOME OPERATIVE QUESTIONS

Higher Education

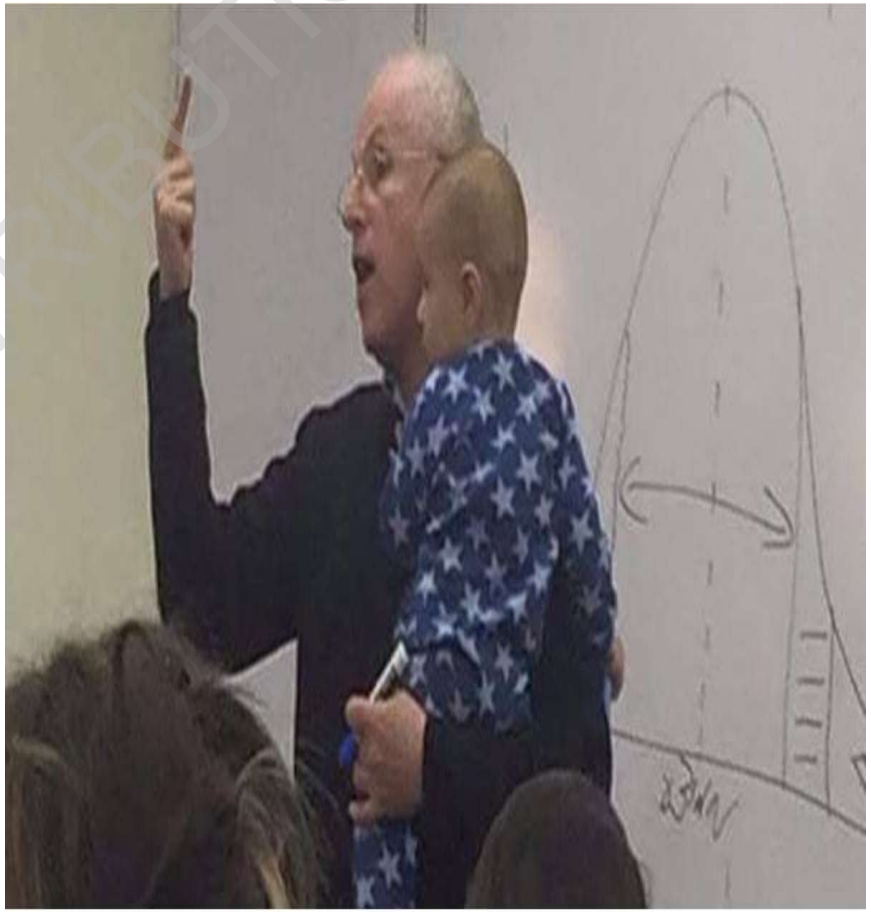
- How many minors are on your campus each day?
- Who knows they are there?
- Who knows where they are?
- Who is responsible for them?
- Who is training those responsible?
  - Reporting/referring
  - BIT/Title IX/Clery
  - Parental/guardian notification
  - Age of consent laws

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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



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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

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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

-The money comes through a shell or through the school

-The employees are our students or temporary hires

-May have our name on it – kind of



Completely Ours

-The money comes into the school

-The staff are our employees

-It has our name on it

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MINORS AND TITLE IX

Additional policy considerations:

- Classifying minors – see state law
- Who has access to minors?
  - Employees
  - Students
  - Quasi-employees
  - Volunteers
  - Other minors' parents/guardians
  - Guests

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MINORS AND TITLE IX

Additional policy considerations (Cont.):

- Facility usage policies
  - e.g.: 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?

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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.** Clery Act reporting of offenses for statistical purposes occurs whether victims are minors or adults.

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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

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MINORS AND TITLE IX: MORE CONCERNS

Additional considerations:

- Inadequate supervision
- Alcohol and controlled substances
- Unplanned time
- Restrooms, locker rooms, and residential facilities

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INTRODUCTION TO TITLE IX AND ATHLETICS

- Overview of Title IX Requirements
- Oversight of Athletics

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TITLE IX REQUIREMENTS & OVERSIGHT FOR ATHLETICS

- Title IX compliance requirements:
  - Effective accommodation of interests and abilities
  - Financial assistance proportionality
  - Treatment of student-athletes
- **Compliance** may be delegated to the Senior Woman Administrator (SWA) or a compliance officer in athletics
- Compliance oversight remains the responsibility of the Title IX Coordinator
  - Need for outside education
- The dangers of being both

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TITLE IX APPLICATION TO ATHLETICS

- Title IX applies to:
  - Intercollegiate athletics
  - Interscholastic athletics
  - Intramurals
  - Club teams/sports
  - eSports
- The Three-Part Test and the 13 program components are typically not as problematic for Intramurals and Clubs because those programs are typically participant-initiated and benefits provided by the institution are far fewer

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OVERSIGHT OF ATHLETICS
GENDER EQUITY: THREE-PART TEST

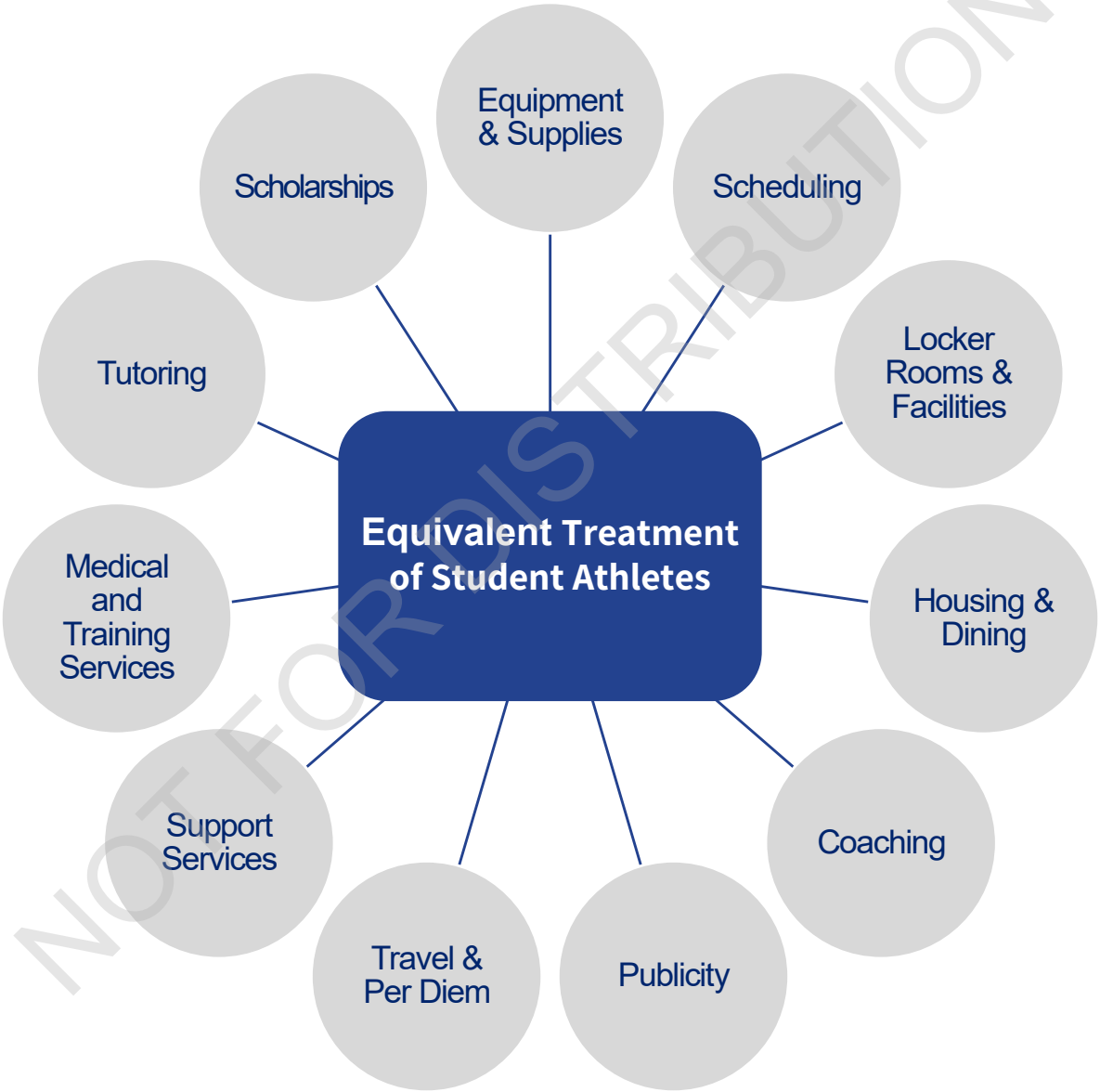
Effective accommodation of interests and abilities:

- **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

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OVERSIGHT OF ATHLETICS GENDER EQUITY



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Learn more in ATIXA's Title IX and Athletics Course!

SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION

- Terminology
- Recent Case Law and Guidance
- Common Concerns and Current Challenges
- Pronouns and Chosen Names
- Athletics
- Activities and Facilities

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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)

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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

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TERMINOLOGY (CONT.)

- **Nonbinary:** A term used to describe individuals who may experience a gender identity that is neither exclusively woman or man or is in between or beyond both genders
- **Intersex**: Born with genitalia, reproductive systems, and/or sex chromosomes of both males and females
- **Heterosexual**: Attracted to people of a gender other than their own
- **Asexual**: Minimal or no sexual attraction to others
- **Bisexual**: Attracted to people of the same as well as other genders

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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

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ADDITIONAL TOPICS

What does it mean to "transition?"

- Social
- Medical
- Legal

Pronoun Usage

- They/them/theirs
- She/her/hers
- He/him/his
- Other non-binary options

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RECENT CASE LAW AND GUIDANCE

- **2020:** Supreme Court holds that discrimination based on sexual orientation and discrimination based on gender identity inherently involve treating individuals differently because of their sex under Title VII
  - *Bostock v. Clayton County*, 590 U.S. ___ (2020)
- **January 2021:** Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- **March 2021:** Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

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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*

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TITLE IX & TRANSGENDER INDIVIDUALS

Common Concerns and Current Challenges

- State-based legislation
- Political changes
- Conflict between Title VII (EEOC) and Title IX (OCR)
- Possible federal legislation
- Discomfort and the claim of reverse discrimination
- Educating institutional communities and constituencies
- Religious concerns
  - Religious schools, club or group membership and/or leadership, sharing of restrooms, etc.

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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)
- Athletics

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 © 2022 Association of Title IX Administrators **Learn more in ATIXA's Gender on Campus Workshop!**

PRONOUNS AND CHOSEN NAMES

- **Names & Pronouns**
  - Education and employment records
  - Databases and record systems
  - Identification documents
  - Classrooms, offices
  - X gender 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

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ACTIVITIES AND FACILITIES

- Where sex-segregated activities and facilities are provided, transgender individuals should be allowed to both **participate** and **access facilities** consistent with their gender identity
- **Restrooms and Locker Rooms**
  - Institutions should not:
    - Require transgender individuals to use facilities inconsistent with their gender identity, nor
    - Require use of individual-user facilities where other students or employees are not made to do so
- Individual-user options can be made available to all students voluntarily seeking additional privacy

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ACTIVITIES AND FACILITIES (CONT.)













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DCL ON TRANSGENDER STUDENTS (RESCINDED)

Athletics

- Beware of requirements that rely upon overly broad generalizations or stereotypes
- Discomfort with transgender students
- NCAA, NJCAA, 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

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DCL ON 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
- Same-sex only guest policies may be discriminatory on the basis of sexual orientation
- Consider summer camps, etc.

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TECHNOLOGICAL ABUSE AND CYBER HARASSMENT

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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, another 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

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OVERLAP BETWEEN TECHNOLOGICAL ABUSE AND SEXUAL EXPLOITATION

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

ATIXA'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.

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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

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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 and Stalking

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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

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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

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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**

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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
- Institution should still take steps to:
  - Provide support and resources to the Complainant to address any “downstream effects”

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INTRODUCTION TO TRAUMA-INFORMED PRACTICES

- ATIXA Position Statement
- What is Trauma?
- Impact of Trauma
- Victim Responses to Trauma
- Trauma-Informed Practices

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ATIXA POSITION STATEMENT

- Worry that application of the knowledge obtained by practitioners in our field has gotten way ahead of the actual science
- The body of knowledge is being misapplied
- Some purveyors of this knowledge are politically motivated to extrapolate well beyond any reasonable empirical conclusions currently supported by the science
- The field needs to incorporate trauma-informed investigation and interviewing methods into its best practices, provided that they do not compromise the ability to obtain credible, relevant evidence

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ATIXA 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
- Wise 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 forego trauma training, but that the trainings must be balanced, or, better yet, obtained from a balanced source

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WHAT IS TRAUMA?

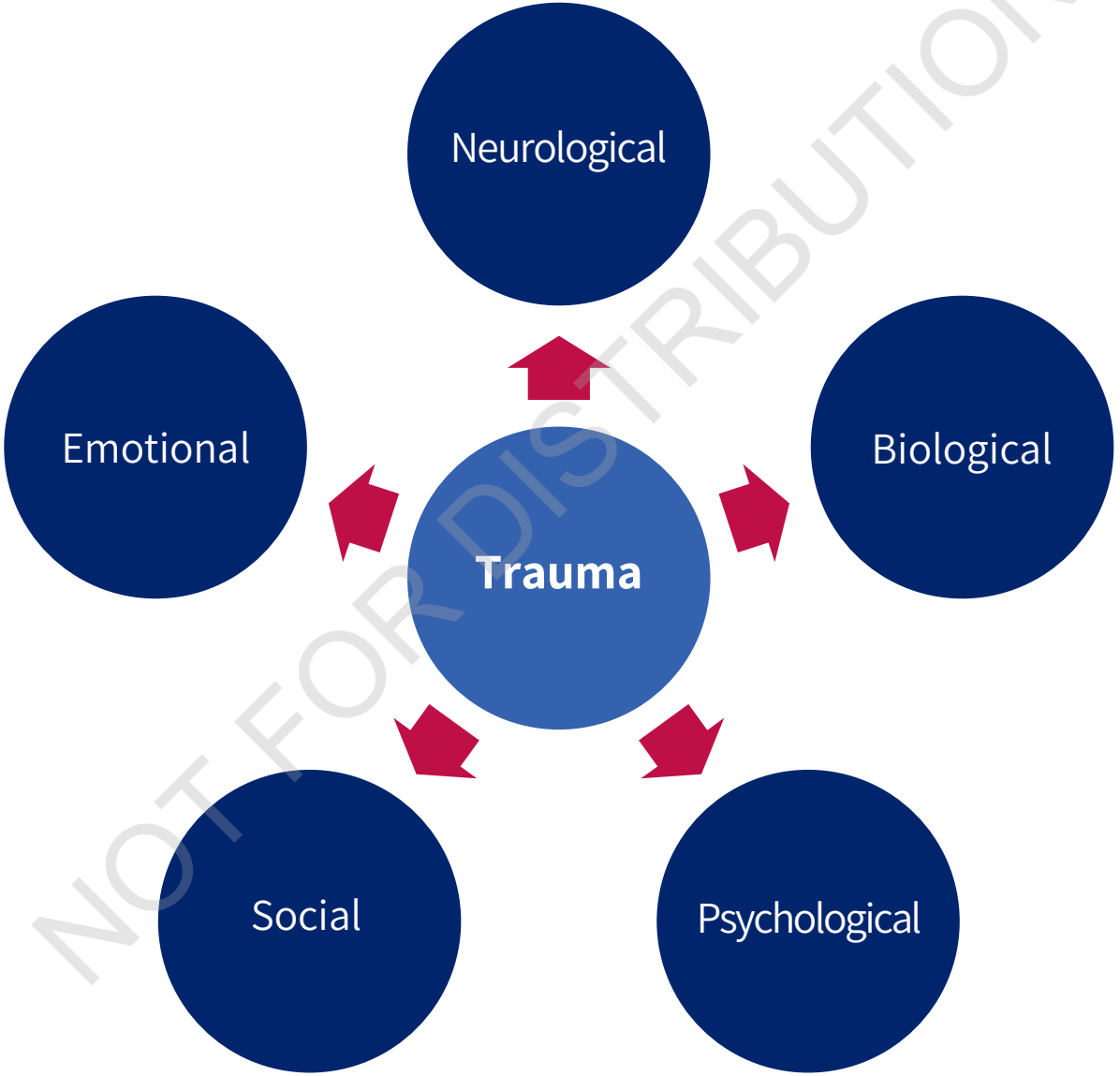
Exposure to an event or events that creates a real or perceived threat to life, safety, or sense of well being and bodily integrity.

- May result from:
  - War
  - Natural Disasters
  - Sexual Violence
  - Relationship Violence
  - Stalking

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IMPACT OF TRAUMA ON FUNCTIONING



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VICTIM RESPONSE TO TRAUMA

May be impacted by:

- Personality
- Coping strategies
- Available support systems and resources
- General resilience
- Past history of traumatic experiences
- Cultural differences in the perception and expression of trauma
- Normalization/adaptation

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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 who 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 who may have a disability

Source: http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care.html

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TRAUMA-INFORMED PRACTICES

- A Trauma-Informed approach also considers and modifies policies, procedures and treatment strategies from the top-down in order to ensure they are not likely to mirror the common characteristics of traumatic experiences.

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Learn more in ATIXA's Coordinator Four and Investigator Four Courses!

Source: http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care.html

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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

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Adapted From: http://socialwork.buffalo.edu/content/dam/socialwork/social-research/ITTIC/trauma-informed-care-infographic.pdf

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 provide services for varying beliefs

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Adapted From: https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf

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FINAL PLANNING

- Title IX Compliance Checklist
- VAWA Compliance Checklist
- Prevention and Programming Compliance Checklist

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TIX REGULATIONS COMPLIANCE CHECKLIST

- Notifications of Recipient's Title IX Coordinator
- Notifications that Recipient does not discriminate on the basis of sex in its education programs and activities
- Policy includes 34 C.F.R. § 106.30 definitions
- Recipient's response to sexual harassment in accordance with 34 C.F.R. § 106.44
- Adopted grievance procedures in compliance with 34 C.F.R. § 106.45
  - Including and defining retaliation in accordance with 34 C.F.R. § 106.71
- Adhering to confidentiality when possible

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VAWA COMPLIANCE CHECKLIST

- Maintain incident statistics for dating violence, domestic violence, sexual assault, and stalking
- Revised categories of bias for Clery Act hate crime reporting
- Required description of disciplinary proceedings for dating and domestic violence, sexual assault, and stalking
- Description of programs in ASR
- Listing of all available sanctions
- Description of protective measures
- Posting of Title IX Coordinator contact information

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PREVENTION AND PROGRAMMING COMPLIANCE CHECKLIST

- Provide incoming students and new employees with programming and document it within the ASR
- Provide on-going prevention and awareness campaigns for students and employees and describe these in the ASR
- Have clear definition for:
  - Awareness programs
  - Bystander intervention
  - Ongoing prevention and awareness campaigns
  - Primary prevention programs
  - Risk reduction

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Questions?

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