



Association of  
Title IX Administrators

February 2021

# Title IX Coordinator and Administrator

Level Two Training & Certification Course

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# TNG

Strategic Risk  
Management Solutions

The logo for ATIXA, featuring the letters 'A', 'T', 'I', 'X', and 'A' in a stylized font. The 'A's are red, and the 'T', 'I', and 'X' are blue.The logo for TNG, featuring the letters 'T', 'N', and 'G' in a stylized font. The 'T' and 'N' are blue, and the 'G' is orange.The logo for NABITA, featuring the letters 'N', 'A', 'B', 'I', and 'T', 'A' in a stylized font. The 'N' and 'A' are green, and the 'B', 'I', and 'T', 'A' are blue.

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.

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# AGENDA

- 1 Pregnant and Parenting Students
- 2 Minors and Title IX
- 3 Introduction to Title IX and Athletics
- 4 Introduction to 504/ADA
- 5 VAWA Requirements and Obligations
- 6 Sanctioning

# AGENDA

**7** Programming and Prevention

**8** The Clery Act and Annual Security Report

**9** Introduction to Campus Climate Surveys

**10** Building a Prevention Program

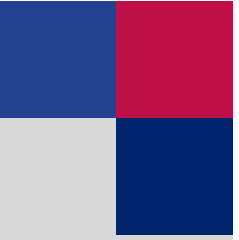
**11** Assessing Your Existing Program

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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 2020 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 more than the bare minimum



# **PREGNANT AND PARENTING STUDENTS**

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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*

# 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-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Final\\_nwlc\\_Gates\\_PregParenting.pdf](https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Final_nwlc_Gates_PregParenting.pdf))

# TITLE IX AND PREGNANCY DEFINED

*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.



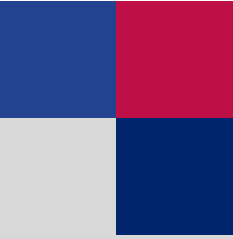
# WHO IS COVERED UNDER TITLE IX PREGNANT AND PARENTING STUDENT REGULATIONS?

- Female students who become pregnant or give birth during an academic school year
- Title IX regulations apply to parenting students for as long as medically necessary after childbirth
  - 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.



# PREGNANCY & TITLE IX

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

# 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

# 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



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

## June 25, 2007 “Dear Colleague Letter”

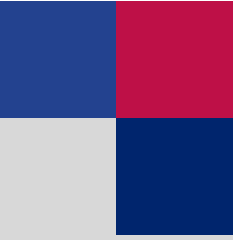
- Although the pamphlet is focused on secondary education, the DCL states that “legal principles apply to all recipients of federal financial assistance, including postsecondary education.”

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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



# TERMINOLOGY & DEFINITIONS

- Title IX Regulatory Language
- OCR Guidance Language

# PREGNANCY & TITLE IX: REGULATORY LANGUAGE

## 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

# 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.”



# 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

# 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

# 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.**”

# PREGNANCY & TITLE IX: OCR GUIDANCE

## Doctor's Note to Participate (Cont.)

- “When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her 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.”

# 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



# 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

# 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

# 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

[Source: NCAA, Pregnant and Parenting Student-Athletes](#)



# CASE STUDY

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# PREGNANCY & TITLE IX CASE DISCUSSION

- March 2020: Jill, a student who is six months pregnant, has had a difficult pregnancy. She has been able to maintain solid grades up to this point but has just been informed by her doctor that she must stay in bed for the remainder of her pregnancy. She approaches her academic advisor and asks him what her options are with her coursework.
- The advisor contacts you and asks what he should tell Jill.
- What are your recommendations?



## SPECIAL TOPICS

- Nursing rooms, mothers' lounges, etc.
- Children at school and in the classroom
- Residence halls
- Labs, chemicals, exposure to diseases, etc.
- Cohort programs
- Licensure requirements
- Online learning/homebound instruction
- Childcare

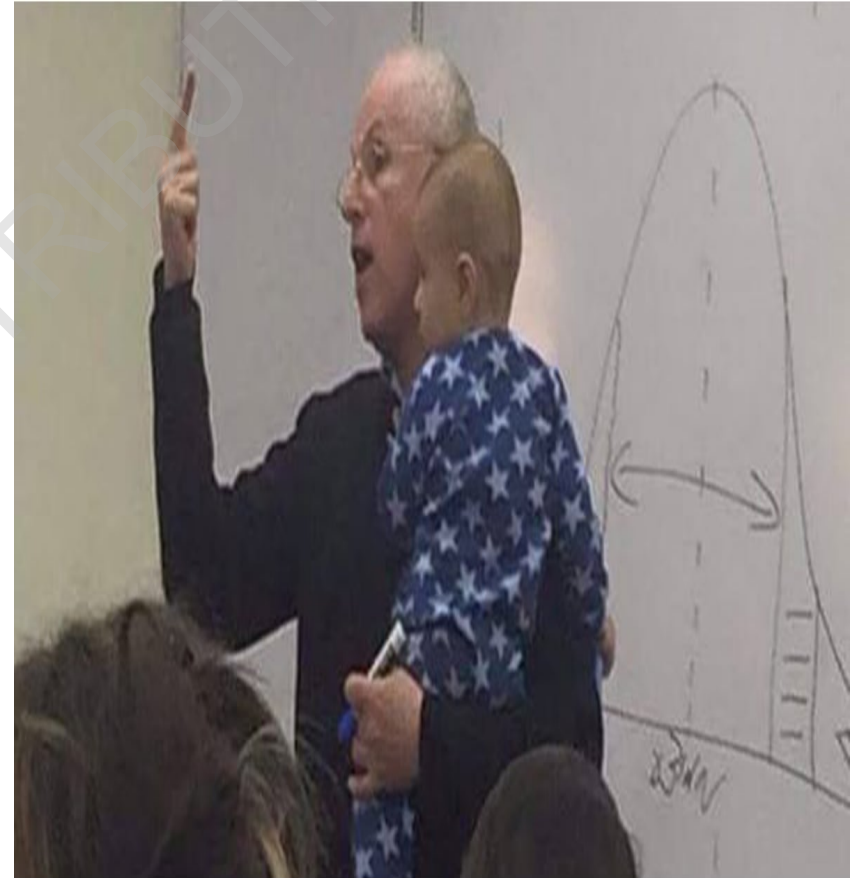
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# NURSING ROOMS, MOTHERS' LOUNGES, ETC.

- Not required under Title IX
- However, 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

# 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





# RESIDENCE HALLS

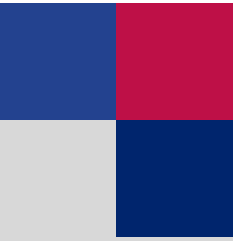
- Not required to change occupancy policies for any residence hall on your campus
- Upon birth of child, Recipient can move the student to housing more appropriate for parenting students, if applicable
  - Not required to pay for housing of parenting student if institution does not offer family housing
- 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 her to vomit often. This disgusts the roommate. The roommate wants the school to move the pregnant student to another room.

# 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

# 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.



# CASE STUDY

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# PREGNANCY & TITLE IX CASE DISCUSSION

- Sasha is an elementary education major who has fulfilled all her course requirements and is one-third of the way through her required student-teaching experience when she gives birth. She faced medical complications with the birth and her doctor tells her she will miss at least one month of her student-teaching. If her graduation date is delayed, she will miss that year's hiring cycle.
- What are some possible approaches?

# ONLINE LEARNING & HOMEBOUND INSTRUCTION

- If this is a service offered to other students with temporary medical conditions, 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

# 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



# **SUPPORTING PREGNANT AND PARENTING STUDENTS**

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# ADMINISTRATORS

- Contact other school administrators to benchmark and possibly share resources, if applicable and appropriate
- Develop policies and procedures that address the needs of pregnant and parenting students
- Annually assess all policies, especially those that are specific to ADA/IDEA/Section 504
- Commit to developing strong student support services
- Train your teachers/faculty appropriately
- Partner and communicate with the Title IX Coordinator

# TEACHERS/FACULTY

- Understand obligations under Title IX related to pregnant and parenting students
- Assist students when requested
- Stay flexible and open minded
- Encourage pregnant and parenting students to utilize school support services and resources, if applicable
- Maintain frequent communication
- If uncertain of your obligations, speak with the Title IX Coordinator
- Educate yourself on how to provide support to pregnant and parenting students

# SUPPORTING PREGNANT AND PARENTING STUDENTS

- Develop support networks for students
  - Pregnant and parenting student organizations
  - Classes: Prenatal, parenting, life-skills, etc.
  - Harness knowledge and experience from employee programs
  - K-12: Parent-Teacher associations
- Supporting partners or spouses
  - Leave and/or excused absences
  - Treat with equal dignity and understanding
  - Stop asking “What do we have to do?” and instead shift to “What can we do?”

# PROGRAM IDEAS

## Prenatal Programs

- Nutrition
- Exercise
- Self-care
- Accessing community-based programs

## Childcare & Early Learning

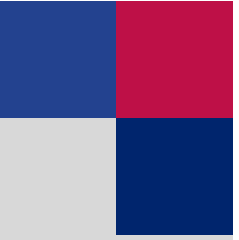
- Mommy/Daddy & Me
- Kindermusik
- Tumbling Tots
- Library Story Time

## Parenting & Life Skills

- Child health and development
- Diapering
- Feeding and bathing

## Dropout/Stop-out Prevention

- Time management
- Health, life balancing
- Financial wellness



# **TITLE IX: PREGNANT AND PARENTING STUDENT COMPLIANCE**

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# COMPLIANCE STRATEGIES

- Detailed institutional policies
- Establish and follow institutional procedures
- Implement a centralized grievance process
- Highlight Title IX Coordinator's role in compliance
- Develop a resource guide
- **Train and educate** students, teachers/ faculty, staff, administrators, coaches, parents/guardians
- Flexibility (when possible) with course tracks
- Posters in student spaces
- Work with Case Manager
- Focus on supportive services

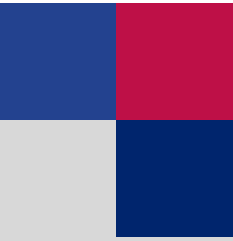
# EDUCATION FOR STUDENTS

- Title IX requirements and protections
- How to file a complaint
- TIX Coordinator contact information (and Deputies)
- Online resources and tools
- Online reporting mechanism
- Empower to approach faculty, coaches, and administrators
- Train students to support each other
- Develop and support programming that targets barriers and problematic social context

# TRAINING FOR TEACHERS, FACULTY, AND OTHER EMPLOYEES

- Train teachers/faculty on Title IX requirements
- Provide teachers and faculty with resource handouts they can provide to students
- Avoid judgement of student's situation and circumstances
- TIX Coordinator should:
  - Develop working relationships with Dean's offices and Department Chairs (when possible) prior to intervention being needed
- NOTE: Faculty (IHE) are typically the largest group responsible for institutional non-compliance with Title IX related to pregnancy; athletics (K-12 and IHE) is also a significant area responsible for non-compliance

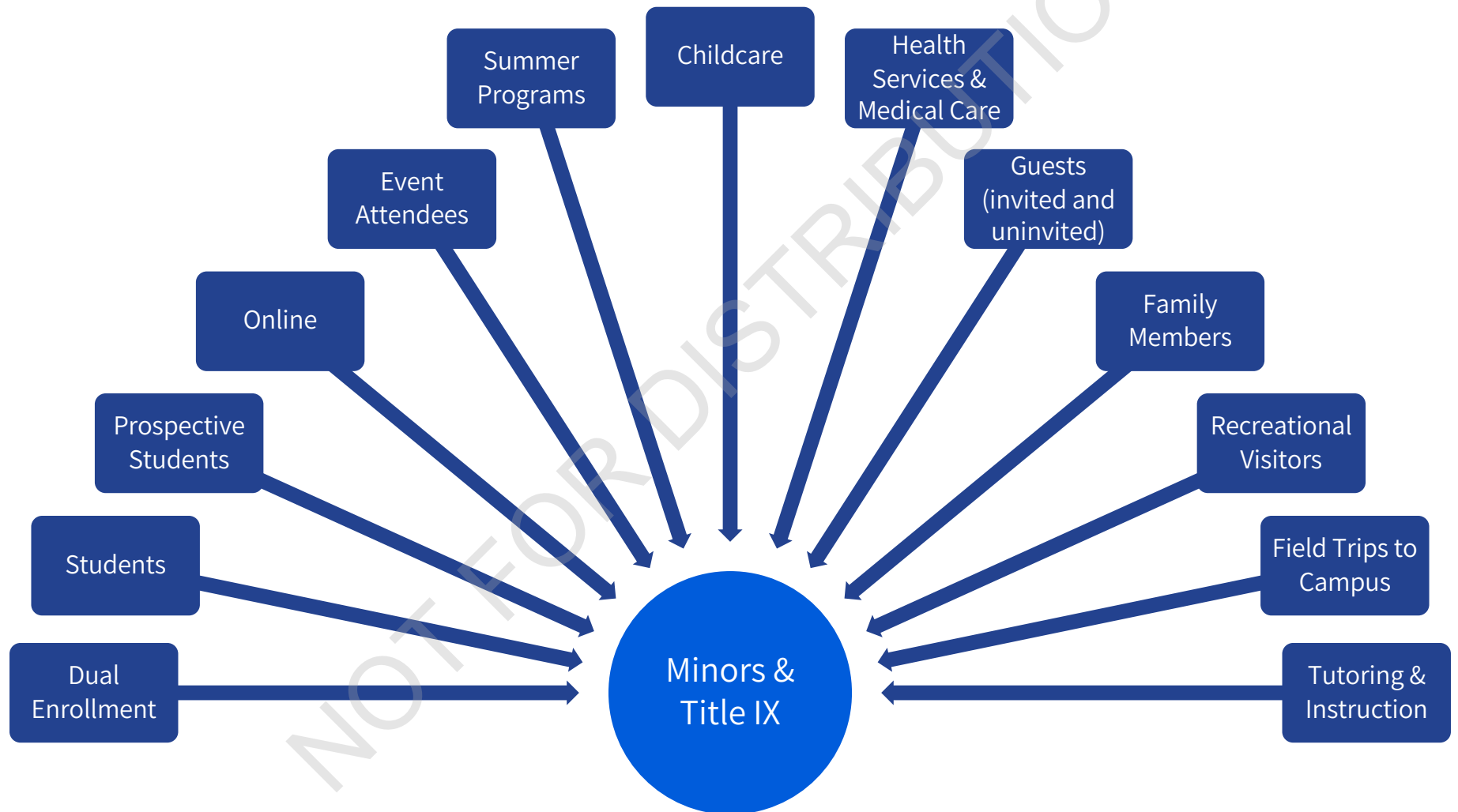




# MINORS & TITLE IX

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

# MINORS & TITLE IX



# MINORS & 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?

# 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

# 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

# DUAL ENROLLMENT STUDENTS

- Effective coordination between the Title IX Coordinator at the college/university AND the District Title IX Coordinator
  - What support measures are needed in each setting (if any)?
  - Who has jurisdiction?
    - Personal jurisdiction
    - Covered programs
    - Geographic jurisdiction
    - Subject matter jurisdiction
  - Who should investigate?
  - Any mandated state reporting required?
  - Note: Higher Ed- FERPA rights belong to the student

# MINORS & TITLE IX: CAMPS AND OTHER PROGRAMS



## Not Ours

- Run by a different entity
- They hire the staff
- We only rent them space



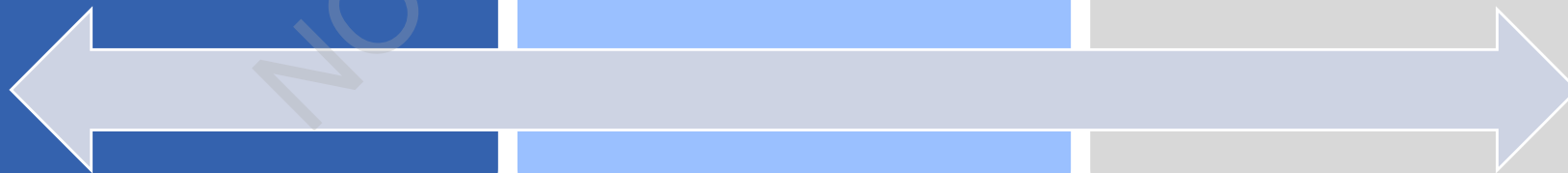
## Kind of Ours

- 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



# MINORS & 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 & 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?

# MINORS & TITLE IX: SAMPLE POLICY

## Abuse involving minors – model policy language (higher education):

- In addition to having students who are minors enrolled, [Recipient] hosts minors as guests and as campers. [State] law narrowly imposes duties on mental health professionals, counselors, clergy, and law enforcement to report certain crimes involving minors, and abuse, to appropriate officials. [Recipient]'s protocol is that **all employees will report all suspected child abuse, sexual abuse of minors, and criminal acts by minors to [the Security Office] without delay.** Clergy Act reporting of offenses for statistical purposes occurs whether victims are minors or adults.

# MINORS & TITLE IX: ABUSE PREVENTION

## Prevention and detection – sexual abuse of minors:

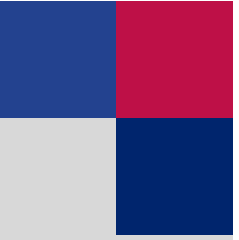
- Policies
- Screening and selection
- Training
- Monitoring and supervision
- Consumer participation – educate parents and guardians
- Reporting systems and mechanisms
- Response – prompt, effective, and compliant with laws
- Administrative practices

# MINORS & 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

# 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

# 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

# OVERSIGHT OF ATHLETICS

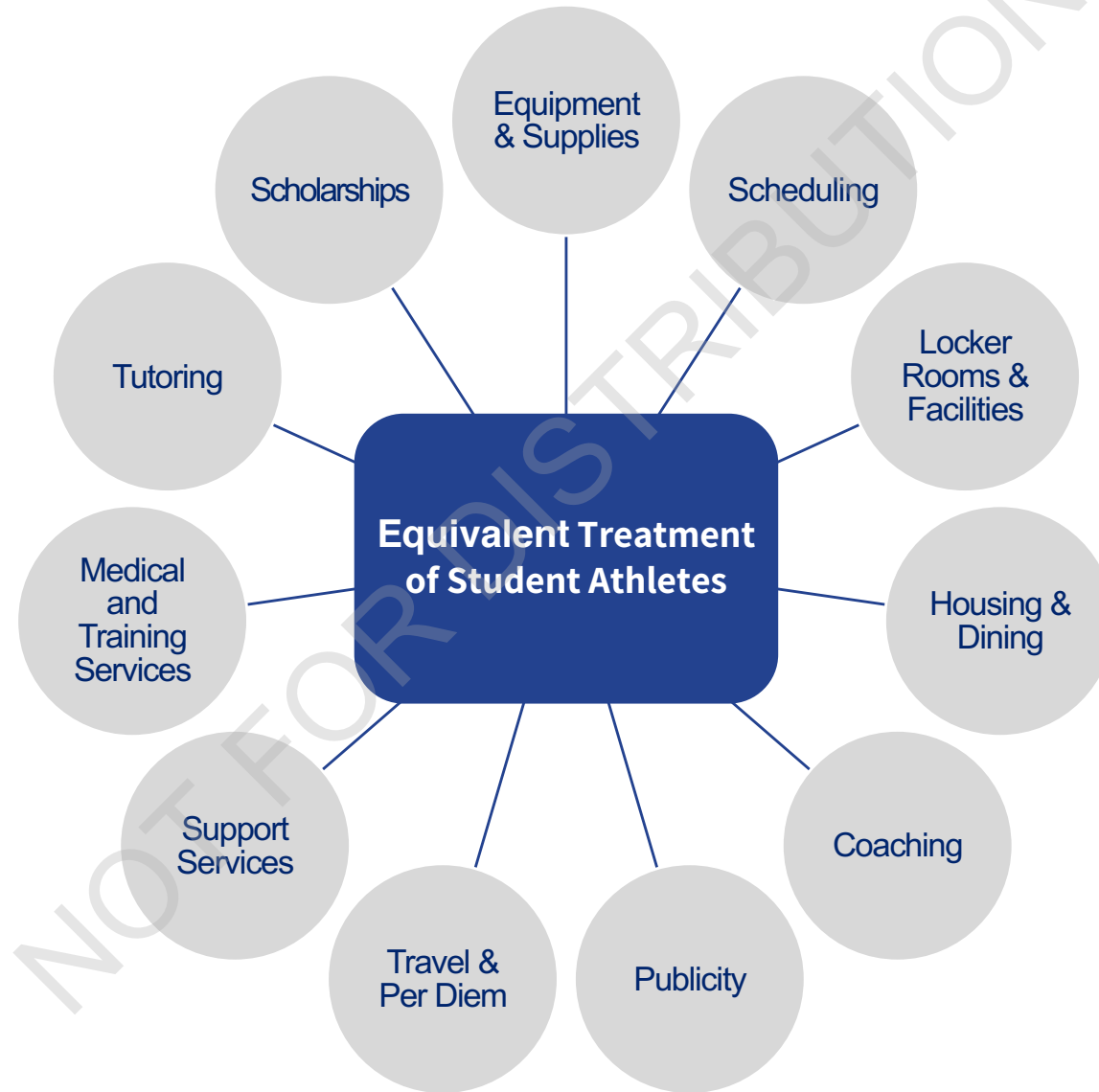
## GENDER EQUITY: THREE-PART TEST

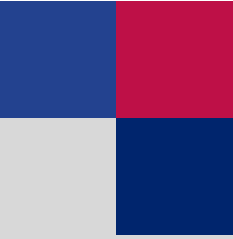
### Effective accommodation of interests and abilities:

- **Part 1:** Opportunities for males and females substantially proportionate to their respective enrollments; OR
- **Part 2:** Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR
- **Part 3:** Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program



# OVERSIGHT OF ATHLETICS GENDER EQUITY





# INTRODUCTION TO SECTION 504 AND THE ADA

- Legal Landscape Overview
- Scope of Covered Programs

# LEGAL LANDSCAPE OVERVIEW

- **Section 504 of the Rehabilitation Act**
  - Prohibits discrimination on the basis of disability in all programs or activities that receive federal financial assistance
  - Enforced by the U.S. Dept. of Education, Office for Civil Rights
- **Fair Housing Act (FHA)**
  - FHA applies to residential “dwellings”
  - Enforced by the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity

# LEGAL LANDSCAPE OVERVIEW (CONT.)

- **Americans with Disability Act (ADA)**
  - Prohibits discrimination on the basis of disability by public entities (Title II) and private education facilities and in the activity of places of public accommodation (Title III)
  - Enforced by the Department of Justice
  - ED's OCR has some responsibilities for Title II
- State Laws

# SCOPE OF COVERED PROGRAMS

- All college/university operations, programs, and activities are subject to Section 504 requirements, including:
  - Academics
  - Athletics
  - Employment
  - Housing
  - Events
  - Web-based educational services

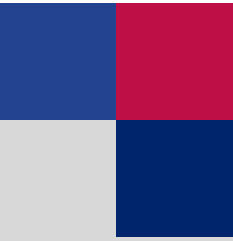
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# KEY TAKEAWAYS

- All individuals with a qualifying disability must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others
- Institutions may provide a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit or service is as effective as others

# CONNECTION TIX & DISABILITY

- Prevalent with pregnant and parenting student accommodations
- Sex-based disability discrimination
- Disparate impact related to treatment and accommodations
- U.S. Dept. of Education, Office for Civil Rights enforcement
- Ensure accommodations are made in Title IX process, including coordinating with Disability Services when necessary



# VAWA REQUIREMENTS AND OBLIGATIONS

- Statistical reporting under Clery
- Programs To Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking
- Awareness Programs
- Bystander Intervention
- Ongoing Prevention and Awareness Campaigns
- Primary Prevention Programs
- Risk Reduction
- Policy And Procedures



# VIOLENCE AGAINST WOMEN ACT (VAWA)

- Originally passed in 1994
  - Reauthorized & amended 2000, 2005, 2013
- Reauthorization in 2000 as part of the Victims of Trafficking and Violence Protection Act
  - Funded new programs, particularly grants
  - Added dating violence to the purpose areas of several VAWA grants
  - Encouraged enforcement of protection orders
  - Authorized funding for sexual assault forensic medical personnel examiners
  - Expanded interstate stalking laws

# VIOLENCE AGAINST WOMEN ACT (VAWA)

- Reauthorization in 2005:
  - Authorized new programs with an increased emphasis on:
    - Violence against Native women
    - Sexual assault
    - Youth victims
- 2013 Reauthorization included significant amendments to the Clery Act:
  - Section 303: Grants to combat violent crime on campuses
  - Section 304: Campus Sexual Violence Elimination Act, or “Campus SaVE”
    - Substantially amended the Clery Act
    - Codified some aspects of the April 4, 2011 Department of Education’s Dear Colleague Letter (DCL) - **Now Rescinded**

# OVERALL VAWA IMPACT

- Increased reporting of domestic violence, dating violence, sexual assault, and stalking
- Decreased rate of both fatal and non-fatal intimate partner violence
- Created net savings to taxpayers by averting other negative social costs
  - See e.g.: OVW 2010 Biennial Report to Congress on Effectiveness of Grant Programs Under VAWA:  
<http://www.ovw.usdoj.gov/docs/2010-biennial-report-to-congress.pdf>

# CAMPUS SaVE ACT

## The Campus Sexual Violence Elimination Act of 2013 (Campus SaVE)

- Enacted in March 2013
- Negotiated rulemaking on Campus SaVE took place in January 2014
- IHE must educate students, faculty, and staff on the prevention of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking
- Intersects with Title IX and Clery requirements and obligations

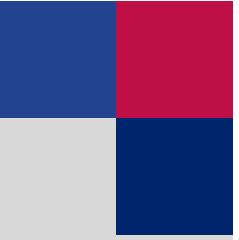
# CAMPUS SaVE OVERVIEW

- 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
- Institutional policies and responses in addressing:
  - Domestic violence, Dating violence, Sexual assault, Stalking
- Prohibits retaliation
- Substantial training requirements

# CAMPUS SaVE ACT: ANNUAL SECURITY REPORT

## Reportable criminal offenses:

- Murder and Non-negligent Manslaughter
- Negligent Manslaughter
- Sex Offenses:
  - Forcible sex offenses
  - Non-forcible sex offenses
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson
- Domestic Violence
- Dating Violence
- Stalking



# THE CLERY ACT AND ANNUAL SECURITY REPORTING

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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



# CLERY/SaVE DEFINITIONS

- Sex offenses forcible
  - Forcible rape
  - Forcible sodomy
  - Sexual assault with an object
  - Forcible fondling
- Sex offenses non-forcible
  - Incest
  - Statutory Rape
- Domestic violence
- Dating violence
- Stalking

Sources: FBI National Incident Based Reporting System (NIBRS) and Violence Against Women Act of 1994 (42 U.S.C. §13925 (a))

# CLERY ACT REQUIREMENTS: THE BASICS

- Collect, classify, and count crime reports and statistics
- Issue campus alerts and warnings
- Disclose missing student notification procedures, when applicable
- Disclose procedures for institutional disciplinary actions
- Keep a daily crime log, when applicable
- Publish an Annual Security Report (ASR)
- Submit crime and fire statistics to the U.S. Department of Education when applicable
- Provide educational programs and campaigns
- Disclose fire safety information, when applicable

# 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, SA, and stalking prevention
- Campus security procedures and practices

## Other

- Information regarding sex offenders
- Descriptions of emergency response and evacuation procedures
- Campus crime statistics
- Procedures institutions will follow when DV/DV, SA, or stalking is reported

# ANNUAL SECURITY REPORT: HATE CRIME CATEGORIES

## Categories of prejudice – actual or perceived:

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

# 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 Handbook guidance; updated again on January 19, 2021
  - Clery Geography: Three categories of locations subject to reporting: on-campus; non-campus 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

# CAMPUS CRIME LOG

- Institutions with campus police/security department must create, maintain, and make available a daily crime log, which must include:
  - Nature
  - Date
  - Time
  - General location of each crime
- Entries must be made within two business days of the report of the information, unless disclosure is prohibited by law or would jeopardize confidentiality of victim
- Required for most recent 60-day period
- Open to public inspection

# TIMELY WARNINGS AND EMERGENCY NOTIFICATIONS

	Emergency Notifications	Timely Warnings
<b>Scope</b>	Significant emergency or dangerous situation	Clery crimes reported to CSAs
<b>Triggered by?</b>	Event that is currently occurring on or imminently threatening campus	Crimes that occurred and represent an ongoing threat
<b>Where event occurs?</b>	Only on campus	Anywhere on Clery geography
<b>How soon to issue?</b>	Immediately upon confirmation of situation	As soon as information is available

# CAMPUS SECURITY AUTHORITIES

## **Campus Security Authorities (CSA): 34 CFR 668.46(a)**

- A CSA is an official “who has significant responsibility for student and campus activities.” 668.46(a)(iv)
- CSA designation can also include:
  - Campus police
  - Security office personnel
  - Title IX officials
  - Student/Academic Affairs personnel
- Department of Education defers to institution’s designation of CSAs
- CSAs may or may not have other Title IX designations such as “Official With Authority”



# CAMPUS SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS

- Signed into law in July of 1992
- Requires that all colleges and universities (public and private) participating in federal student aid programs provide sexual assault “victims” certain basic rights:
  - Complainant shall be notified of their options to report to law enforcement
  - Complainant and Respondent must have the same opportunity to have others present
  - Complainant and Respondent must be informed of the outcome of any disciplinary proceeding

# CAMPUS SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS (CONT.)

- Complainant must be notified of counseling services
- Complainant must be notified of options for changing academic and living situations
- Part of campus security reporting requirements under Clery

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# CAMPUS SaVE: ANNUAL TRAINING

- Annual training of officials involved in investigating and/or resolving complaints:
  - **The four types of cases:** 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

# 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

# POLICIES & PROCEDURES: PROMPT, FAIR, AND IMPARTIAL (CONT.)

- The Complainant and Respondent must be simultaneously informed in writing of (Cont.):
  - Any change to the results that occur prior to the time that such results become final
  - When such results become final
- Both the Title IX formal grievance process and “Process B” must be VAWA compliant

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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 and 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

# 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 occur, including information in writing regarding:
  - The importance of preserving evidence to prove a crime or obtain a protective order
  - To whom such incidents should be reported
  - That, if the Complainant wishes, campus authorities may assist the Complainant in notifying police

# POLICIES & PROCEDURES: COMPLAINANT SERVICES

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

- 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



# 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

# POLICIES & PROCEDURES: COMPLAINANT SERVICES

## Policy statements in the ASR must include:

- 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

# POLICIES & PROCEDURES: CONFIDENTIALITY

## Policy statements in the ASR must include:

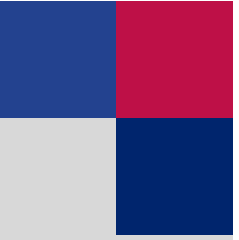
- Information about how confidentiality of Complainants will be protected, including how publicly available recordkeeping will be accomplished without including identifying information about the Complainant, to the extent permissible by law
  - Timely warnings must withhold the names of Complainants as confidential

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# POLICIES & PROCEDURES: SANCTIONS AND PROTECTIVE MEASURES

## Policy statements in the ASR must include:

- Possible sanctions or protective measures that [an] institution may impose following a final determination of an institutional disciplinary procedure regarding:
  - Rape
  - Acquaintance rape
  - Domestic violence
  - Dating violence
  - Sexual assault
  - Stalking



# SANCTIONING

- Regulatory Requirements
- Sanctioning Considerations
- Sanctioning Pitfalls
- Sanctioning Exercise

# SANCTIONING IN TITLE IX CASES

- **Duty is to not act unreasonably when striving to:**
  - Bring an end to the discriminatory conduct (**Stop**)
  - Take steps reasonably calculated to prevent the future reoccurrence of the discriminatory conduct (**Prevent**)
  - Restore the Complainant as best you can to their pre-deprivation status (**Remedy**)
- May clash with the typically educational and developmental sanctions of student conduct processes
- Sanctions for serious sexual misconduct should not be developmental as their primary purpose; they are intended to protect the Complainant and the community

# DISCIPLINARY SANCTIONS: REGULATORY REQUIREMENTS

- Grievance process must “describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the Recipient may implement following any determination of responsibility.” 34 C.F.R. 106.45
- Recipients must follow a “grievance process that complies with Section 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures.” 34 C.F.R. 108.0 ( c )
- Disciplinary sanctions alone are often insufficient because the Recipient must also provide the Complainant with appropriate remedies designed to restore or preserve equal educational access.

# DISCIPLINARY SANCTIONS: REGULATORY REQUIREMENTS (CONT.)

- Disciplinary sanctions are not required under Title IX
  - The obligation is to remedy in a manner that is not clearly unreasonable
  - Sanctions can be one form of remedy
  - Disciplinary sanctions – both their form and substance – are at the discretion of the Recipient (i.e., the OCR will not second-guess the sanctions)
    - Provides flexibility based on the nature and severity of the behavior, the parties, and the context of the behavior, as well.
- Recipients must inform the Complainant and the Respondent of any and all sanctions imposed on the Respondent; this includes employee discipline



# SANCTIONING CONSIDERATIONS

## **The sanction must be reasonable and reflect the severity of the behavior**

- May consider:
  - prior misconduct
  - precedent
  - attitude
  - collateral and/or multiple violations
- Should be educational, but safety is primary consideration
- What best compensates for loss or injury to school or persons?
- Compliant with laws and regulations (e.g., Title IX)
- Should consider the educational impact on the Complainant and Respondent

# SANCTIONING IN SEXUAL HARASSMENT CASES

- Investigation alone is not sufficient to overcome a deliberate indifference claim. Must also remedy if the Respondent is found in violation.
- Should be a nexus between the sanctions and the discriminatory conduct which led to the sanction(s)
- What is appropriate?
  - Separation/expulsion
  - Suspension
  - Lesser sanctions
- Engage in strategic education and training requirements
- Conduct a risk assessment and mitigation process

# CONSIDERATIONS POST-FINDING

- Ensure remedies are not clearly unreasonable in light of the known circumstances
- Avoid undue delays
- Take immediate steps to protect Complainants even before the final outcome (e.g., no contact orders, etc.)
- Ensure that remedies are equitable
- Consider informal resolution as part of remedial process
- Monitor for retaliation and respond immediately to allegations
- Regularly review policies, procedures, and practices to ensure they are in accordance with best practices, the regulations, and state and federal case law

# SANCTIONING PITFALLS

- Conflating finding and sanctioning processes
- Timing of impact statements
- Not targeted to stop, prevent, and remedy
- Unwillingness to suspend or expel
- Failure to address mitigating circumstances
- Lock-step or automatic sanctioning – failure to address incident-specific circumstances
- Likeability of parties: + & -

# SANCTIONING PITFALLS (CONT.)

- Assumption that sanctioning is always the primary remedy
- Taking things personally as Decision-maker
- Bad precedent
- Deviating dramatically from norms
- Progressive sanctioning
- Developmental? Remedial? Protective?

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# SANCTIONING PITFALLS (CONT.)

- Weak sanctions for retaliation
- Weak sanctions for breach of no-contact orders
- Weak sanctions for sexual violence
- Disparate sanctions for same behavior
- Abiding by the wishes of the Complainant(s)
- Privacy of sanctioning information
  - Informing Complainants of sanctions
  - Making an example
- Others?

# SANCTIONING EXERCISE

A female staff member continues to make overt and tacit sexual advances towards a female colleague, even though the recipient of the behavior has repeatedly told the staff member that the advances are unwelcome

- The advances are verbal, as well as in emails and text messages
- Some of the more subtle advances have been in the company of others
- The Complainant filed a complaint because it is starting to impact her ability to focus at work
- Female staff member found to have violated the policy

**What sanctions do you impose?**

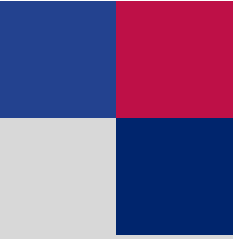
# SANCTIONING EXERCISE

A male tenured faculty member is found responsible for non-consensual intercourse involving a female student who is not in any of the faculty member's classes

- The Investigator determines that the student was incapacitated, and the Respondent should have known of that incapacity
- The Respondent is a full professor holding a prestigious endowed chair position
- The student and the faculty member engaged in consensual sex five times after the non-consensual incident
- The student brought the allegation shortly after the faculty member began having intercourse with the student's friend

**What are your sanctions?**





# PROGRAMMING & PREVENTION EFFORTS

- Primary Prevention and Awareness Programs

# VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

## Annual Security Report (ASR) Statement must include:

- “A description of the institution’s educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault and stalking.”
- “A description of the institution’s **primary prevention** and **awareness programs** for all incoming students and new employees.”
  - (<https://www.law.cornell.edu/cfr/text/34/668.46>)

Programs to prevent dating violence, domestic violence, sexual assault and stalking are defined as **comprehensive, intentional and integrated programming, initiatives and strategies and campaigns** intended to end dating violence, domestic violence, sexual assault and stalking.

# 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

# VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Programs must include **primary prevention**
  - Primary prevention defined: programming, initiatives, and strategies intended to stop the crimes before they occur through:
    - Promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality
    - Encourage safe bystander intervention
    - Seek to change social behavior and social norms in healthy and safe directions
      - **Examples:** programs that promote good listening and communication skills, moderation in alcohol consumption, and common courtesy

# VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Programs must include **awareness programs**
  - Awareness programs defined: Community-wide or audience-specific programming initiatives and strategies that increase audience knowledge, and share information and resources to:
    - Prevent violence
    - Promote safety
    - Reduce perpetration

# 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 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

# VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

## Incoming Students

- First-year students
- Transfer students
- Student-athletes
- International students
- Graduate students
- Professional students
- Online students
- Others?

## New Employees

- Full-time
- Part-time
- Faculty – all levels
- Staff
- Administrators
- Union and non-union
- Student employees:
  - RAs, TAs, GAs
- Others?

# 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 §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



# VAWA: EDUCATIONAL PROGRAMS AND CAMPAIGNS

- Statement must include a description of the institution's ongoing prevention and awareness campaigns
  - Programming, initiatives, and strategies that are sustained over time
  - Must focus on increasing understanding of topics relevant to and skills for addressing dating and domestic violence, sexual assault, and stalking
  - Should use “multiple strategies in a coordinated way throughout the year to reach all populations.” 34 C.F.R. 668.46
    - Communication strategies
    - Programming and providing materials
    - Booths at student fairs and events
    - Faculty-led classroom discussions

# VAWA: BYSTANDER INTERVENTION

- Programming should include “a description of safe and positive options for bystander intervention”
  - Defined as: “Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, and stalking.” 34 C.F.R. 668.46
    - Recognizing situations of potential harm
    - Understanding institutional structures and cultural conditions that facilitate violence
    - Overcoming barriers to intervening
    - Identifying safe and effective intervention options
    - Taking action to intervene

# BYSTANDER INTERVENTION

- Think back to sexual assault prevention from the 90's and early 2000's
  - Educating young women to watch their drinks and travel in groups
  - Know your surroundings and always have a back-up plan to call for help
  - Rape whistles, pepper spray, tasers
  - Training in self-defense

# BYSTANDER INTERVENTION

**Educators must now make an intentional**



# BYSTANDER INTERVENTION

- Shift the onus of preventing sexual assault from the victim to the perpetrator
- Focus is on fixing the problem rather than teaching individuals to not become victims
- Create safe places to gather and collectively place responsibility for maintaining a safe environment on the community
- Encourage the community to address inappropriate behavior by not tolerating sexist jokes, misogynistic behavior, etc. and train on intervening when there are risk behaviors present

# BYSTANDER INTERVENTION

**A positive bystander and prevention model takes a wider, community-based approach that shifts cultural norms and expectations of behavior rather than simply targeting individuals as potential victims or perpetrators.**

## **Barriers to Helping**

- Believe others think the behavior is okay
- Afraid to act in a way that is socially unacceptable
- Believe it is not our business
- Believe someone else will help
- Not in tune with surroundings
- Not sure what to do

## **Promoting Helping**

- Creation of a culture that values respect, helping others, wellness, empowerment, etc.
- Training on red flags and what to look for in identify a problematic situation
- Development of a community approach to responsibility
- Having the confidence and ability to know how and when to intervene

# TITLE IX/VAWA SEC. 304 TRAINING CHECKLIST

## Trainee Populations:

- Title IX Team Members
  - TIX Coordinator and Deputies, Investigators, Decision-Makers, Advisors, and Informal Resolution Facilitators
- First Responders
  - RAs, 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

# PREVENTION AND TRAINING CHECKLIST

## How?

- In person
- Online
- Mandatory

## How Often?

- Upon hire/enrollment
- Annually
- Change in role/responsibility
- Change in law/policy
- State law requirements
- Remedy and/or discipline

## When?

- Orientation
  - Student-athletes
  - International students
  - Employees
  - New students (all levels)
- Class registration for returning students
- Residence Life orientation for on-campus residents
- Athletics Compliance Meeting
- Employee performance review process



# PREVENTION AND TRAINING CHECKLIST

- What **training content** areas should be covered for each population?
  - Institutional oversight and resources
  - Identifying and reporting sexual harassment
  - Investigating, responding to, and rendering findings for complaints
  - Remedies
  - Consent, substance abuse, and bystanders
  - Campus assessment
  - Domestic Violence, Dating Violence, Sexual Violence, Stalking.
- Train members of the Title IX Team on the required topics per the Title IX regulations

# GROUP ACTIVITY: BRAINSTORMING

- What programs or resources are available?
- What works?
- What does not work?
- How do you get faculty trained?
- How does an open enrollment institution train all incoming students and adjuncts?
- What are you struggling with on your campus?
- How often do you train?
- How do you determine training content?
- How should K-12 train their students and teachers?

# 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



# INTRODUCTION TO CLIMATE ASSESSMENT

- Student Climate Surveys
- Faculty/Staff Climate Surveys
- Annual Case Analysis

# CLIMATE SURVEYS

- Climate surveys provide opportunities to better understand your school's community experiences with sexual harassment, sexual assault, stalking, and intimate partner violence
- Surveys typically consist of questions which 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
- Could be required by state law

# 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 schools 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 IPV

# CLIMATE SURVEY STAGES

Development

Implementation

Analysis

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# DEVELOPMENT

- Surveys can be designed in a wide variety of ways. It is generally advisable to follow these guidelines:
  - Keep it a reasonable length; otherwise, people won't take the time to complete it or won't give accurate answers to complicated questions
  - Design the survey with a focus on how the results will be reported.
  - Use a mixed method design to capture both qualitative and quantitative data
    - Multiple choice
    - Likert scale
    - Open text boxes



# DEVELOPMENT (CONT.)

- Determine what information is being sought and then develop questions that will directly collect that information in responses
  - Include definitions to reduce individual interpretation and provide further validity to responses
    - Example: As used in this survey, the term, “gender-based violence” incorporates rape, sexual assault, dating violence, domestic violence, gender-based stalking, and other forms of gender-based violence
  - Be very careful to not ask about more than one topic in a single question; this will cause validity concerns in the analysis
  - Consider the difference between using terms vs. describing behaviors (e.g., rape vs. sex with someone who is asleep)

# DEVELOPMENT (CONT.)

- Most crucial phase of the survey process
  - Should involve solid research design, readable questions, and stakeholder buy-in
- Schools have many options when it comes to the development of their survey
  - Create homegrown survey with support from those with research experience
  - Work with a third-party organization like ATIXA

# IMPLEMENTATION

- Challenge: getting the survey in the hands of the population being assessed
- Develop a plan that involves a variety of options to maximize responses
- Opportunities to survey:
  - Waiting rooms or lobbies
  - Orientation events
  - Sports practices or club/organization meetings
  - Health and wellness fair
  - Capstone courses
  - Homerooms

# IMPLEMENTATION (CONT.)

- Types of surveys:
  - Online with tools (e.g., Survey Monkey, Qualtrics, etc.)
  - Pen and paper
  - Question of the Week on campus portal (e.g., Blackboard, Canvas, etc.)

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# ANALYSIS

- Ensure the individual or group performing the analysis has the necessary experience to do it well
- More detailed statistics (e.g., correlative analysis, ANOVA, or advanced design) are often not needed. Simple summary percentages of the response rate can typically provide rich and meaningful data.
- Analysis should provide a data story
  - Story should be easily understood and shed light on areas of further exploration
- Overly complicated analysis and data presentation should be avoided

# SURVEY STRUCTURE

- The first step in the development of a climate survey is understanding who you are surveying
  - Demographic questions provide the ability to break down results into 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, etc.)

# 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 school 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 more complete understanding of participants' views

# SAMPLE DEMOGRAPHIC QUESTIONS

- Student classification (by credit hours): first-year, sophomore, junior, senior, graduate, non-degree seeking
- Current enrollment: full-time, part-time
- Age range: Under 18, 18–20, 21–24, 25–34, 35–44
- How do you identify: man, woman, transgender, intersex, other [optional: please list], prefer not to answer
- International student?
- Athlete?
- Fraternity or sorority member?
- Disability?
- On-campus resident?



# CLIMATE SURVEYS: TOPICS

- ATIXA recommends targeted questions to evaluate how well individuals understand the existing sexual assault, harassment, stalking, and intimate partner violence policy
  - This involves a survey question with an embedded link asking first if the student 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 school

# CLIMATE SURVEY QUESTION EXAMPLES

- Do you recall ever attending any [Recipient] programs/trainings that addressed the prevention of gender-based violence (e.g., interactive theater, lectures, classroom discussions, orientation programs, etc.)?
  - Yes
  - No
  
- How can Recipient improve its programming/training efforts on gender-based violence? (open-ended)

# CLIMATE SURVEY RESULTS

- Survey reports must be readable and practical
  - Fancy charts and graphs may overly complicate the story the report needs to tell
- Data should clearly demonstrate which areas need further exploration or attention
  - Survey results should provide a roadmap for process and prevention program improvement
- No school has a perfect process; not including critical responses will create credibility concerns for the entire report
- Results can support the need for additional resources

# CLIMATE SURVEY RESULTS EXAMPLES


- Of those participating, 25 percent are first-years and sophomores, 28 percent juniors, 18 percent seniors, and 4 percent graduate and post-graduate students
- 98 percent are full-time enrolled students between the age ranges of 18–20 (64 percent), 21–24 (32 percent) and 25 and older (4 percent)
- 70 percent of the participants identify as women
- 20 percent of the participants are student athletes
- 45 percent of the participants are involved in Fraternity and Sorority Life
- 82 percent of the participants are involved in at least one student organization
- 16 percent of the participants transferred from another institution

# CLIMATE SURVEY RESULTS EXAMPLES (CONT.)

- Nearly 40 percent of participating students are unsure of where to find information about campus resources for victims of gender-based violence, and 46 percent of students are unfamiliar with the institution's bystander intervention program, Green Dot. Of note, only 37 percent of students reported that campus resources were covered in gender-based violence programs offered on campus.
  - **Analysis:** Further education to the community would be helpful to increase the percentage of students who are aware of campus resources for victims.

# SURVEY COMPLETION CHALLENGES

Problem	Solution
Low response rate	Pick a slower time of the year to survey. Ensure participants have enough time and energy to complete. Send reminder emails with three to four opportunities over a month to complete. Offer an incentive for participation.
Start but don't finish	Some software can track people who start but don't finish. Consider reducing survey length and detail of questions. Are there common areas where participants stop before completing the survey?
Low online response	Find times when students are in one place such as classes/orientations to increase the survey response. Additionally, find times when employees are more likely to complete the survey such as academic breaks.

A magnifying glass with a black handle and silver frame is positioned over a stack of several orange and white folders. The folders are stacked in a way that shows their edges and the pages inside. The background is a solid dark blue. A faint watermark reading "NOT FOR DISTRIBUTION" is visible diagonally across the image.

# ANNUAL CASE ANALYSIS

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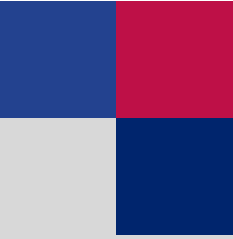
# ANNUAL CASE ANALYSIS

- Consistent with data provided for the ASR
- Some systems provide automatic report creation
  - E.g., Maxient, Advocate, 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



# KEY TAKEAWAYS

- Climate surveys, institutional, assessments, and annual case analysis can provide rich data that can:
  - Help improve the student experience
  - Assist 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 solutions to concerns such as low reporting numbers, low program participation, etc.
  - Strengthen the argument for additional resources
  - Allow institution to be more strategic in its approach to compliance



# INTRODUCTION TO BUILDING A PREVENTION PROGRAM

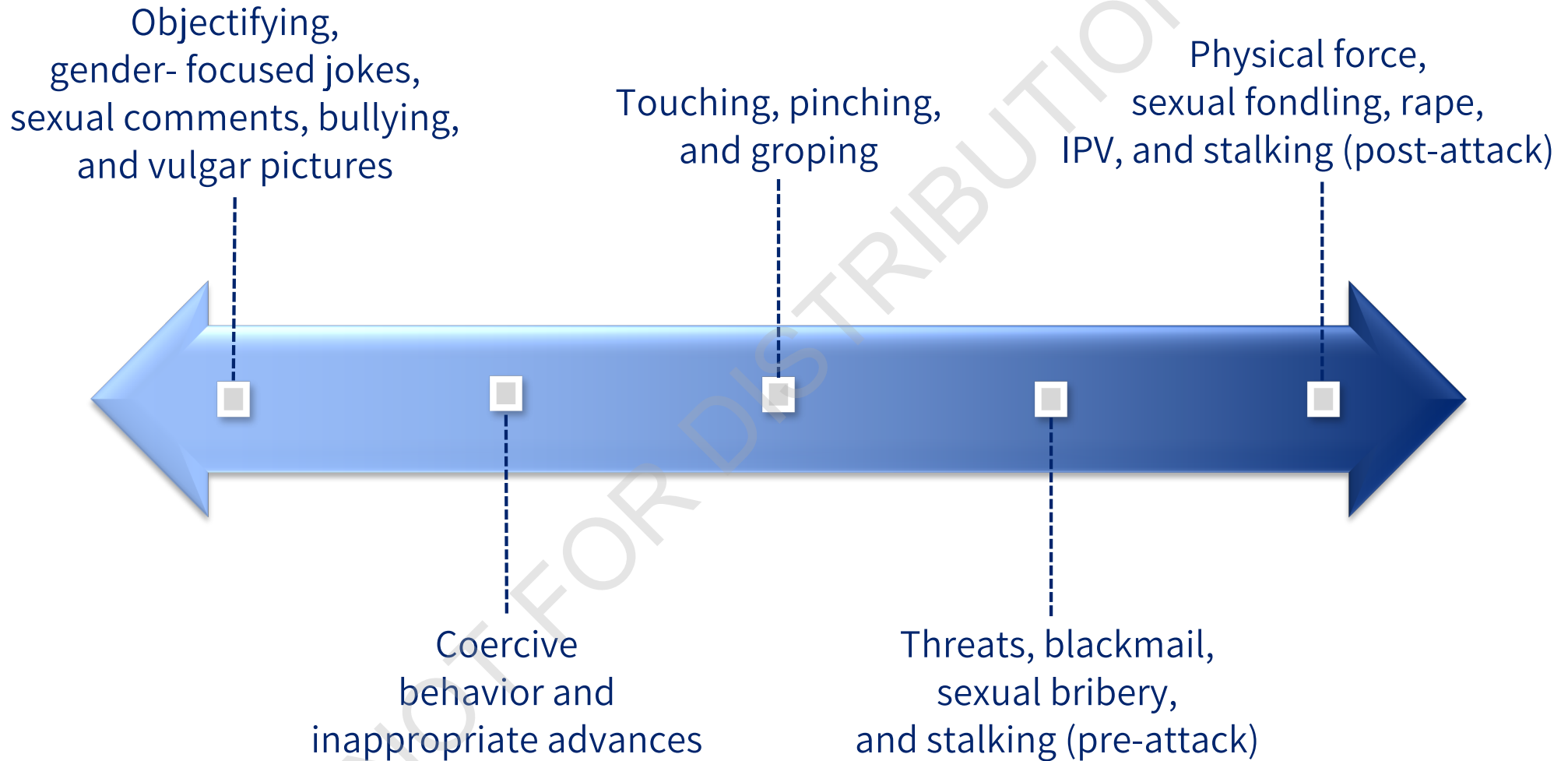
- Primary Prevention
- Secondary Prevention
- Tertiary Prevention

# PREVENTION IN PRACTICE

- The first key to prevention is recognition
  - Bystander intervention example
- There are many ways that Sexual Harassment/Stalking/Sexual Violence can manifest, but rarely does it do so in isolation
- The context is one of an entire continuum, including bullying and stalking

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# CONTINUUM OF SEXUAL/SEX-BASED DISCRIMINATION

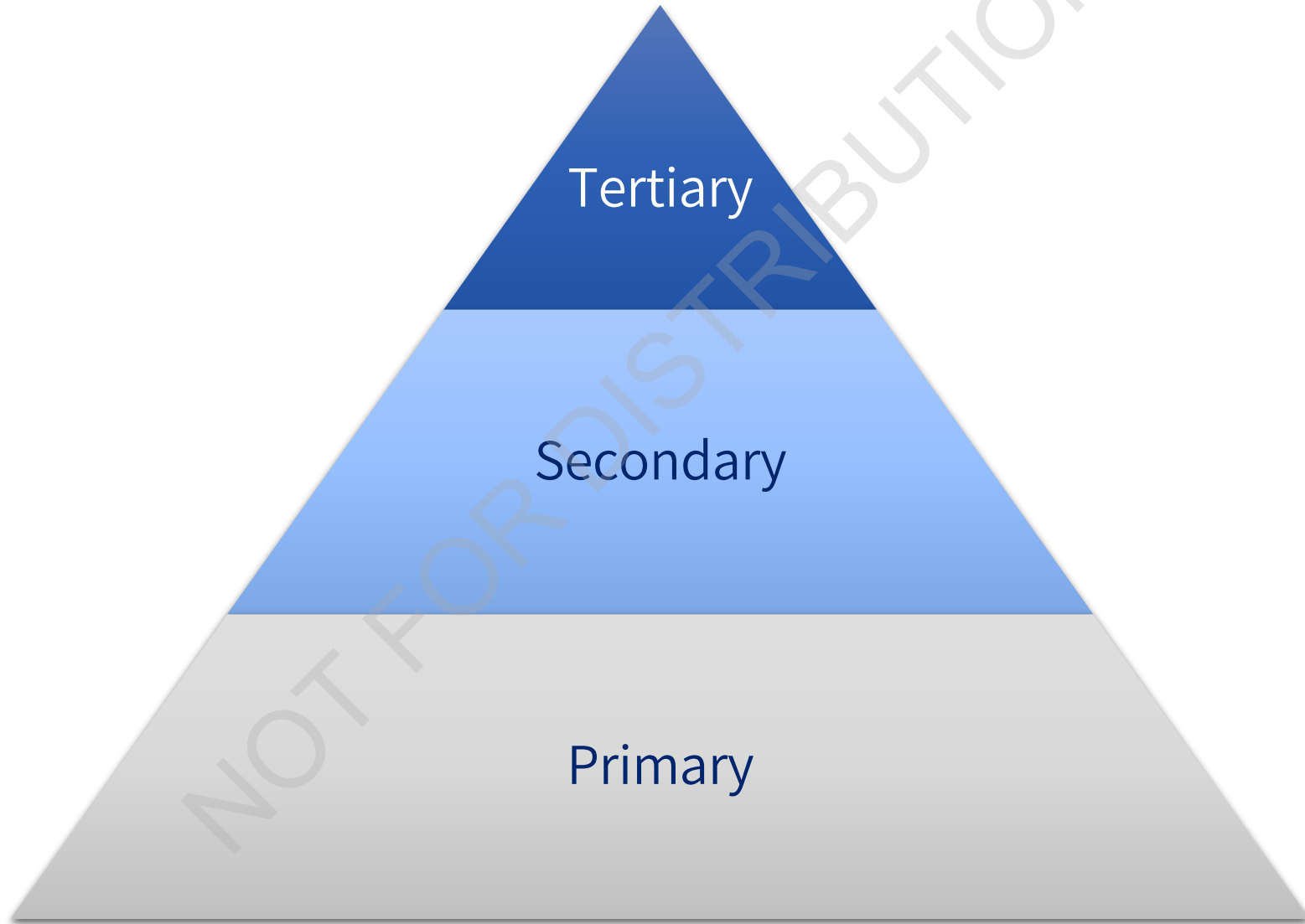


# PREVENTION METHODOLOGIES

## Prevention is:

- Integrated across disciplines and therefore collaborative
- Holistic and addresses multiple areas of wellness (physical, emotional, spiritual, intellectual, etc.).
- Evidence based and/or able to demonstrate efficacy
- Strategic in design and implementation
- Multi-targeted: directed at the individual, the community, and the society/environment

# LEVELS OF PREVENTION FRAMEWORK



# PRIMARY PREVENTION STRATEGIES

- Primary prevention aims to prevent the harm *before* it occurs
- Reduces the prevalence and occurrence of sexual violence, gender-based violence, or discrimination
- Examples:
  - Bystander Intervention
  - Programs teaching healthy and respectful relationships
  - Risk-reduction programming
  - Programs addressing men's role in preventing sexual violence
  - Discussion groups with high-risk of perpetration populations
  - Social norming campaigns

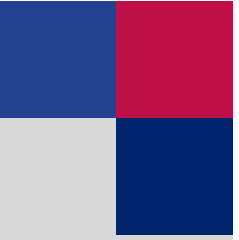
# SECONDARY PREVENTION STRATEGIES

- Secondary prevention targets a problem that already exists; often immediately after injury has occurred
- Provides short-term remedies to minimize the impact of the incident and address consequences of the harm
- Examples:
  - Interim/supportive measures and victim services
  - Deterrence-based programs
  - Awareness programming — Take Back the Night, Walk a Mile in Her Shoes, etc.
  - Social norming campaigns (can be primary or secondary depending on focus)



# TERTIARY PREVENTION STRATEGIES

- Tertiary prevention provides treatment and longer-term remedies when harm has already occurred
- Addresses lasting or longer-term responses for those already impacted by the incident
  - Remedies for Complainants
  - Respondent services
  - Policies and procedures to address sexual harassment, sexual assault, dating and domestic violence, and stalking
  - Support groups and long-term remedies
  - Circles of support and accountability



# ASSESSING YOUR EXISTING PROGRAM

- Structuring Your Team
- Leveraging and Empowering TIXC Authority
- Title IX Regulation Compliance
- VAWA Compliance
- Prevention

# 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)

# TITLE IX TEAM STRUCTURE: ADDITIONAL CONSIDERATIONS

- Title IX Teams can be as small as five people, but commonly will be more:
  - 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
    - 4-6 trained Advisors
  - **K-12 Schools**
    - 1-2 Investigators per building\*
    - 1-2 Decision-makers per building\*
    - 1-2 Appeal Decision-makers per building\*

\*Recommend district-level as well

# TIX COORDINATOR: ADVANCED QUESTIONS

## 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)

# THE COORDINATOR: ADVANCED QUESTIONS

## 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

# THE COORDINATOR: ADVANCED QUESTIONS 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

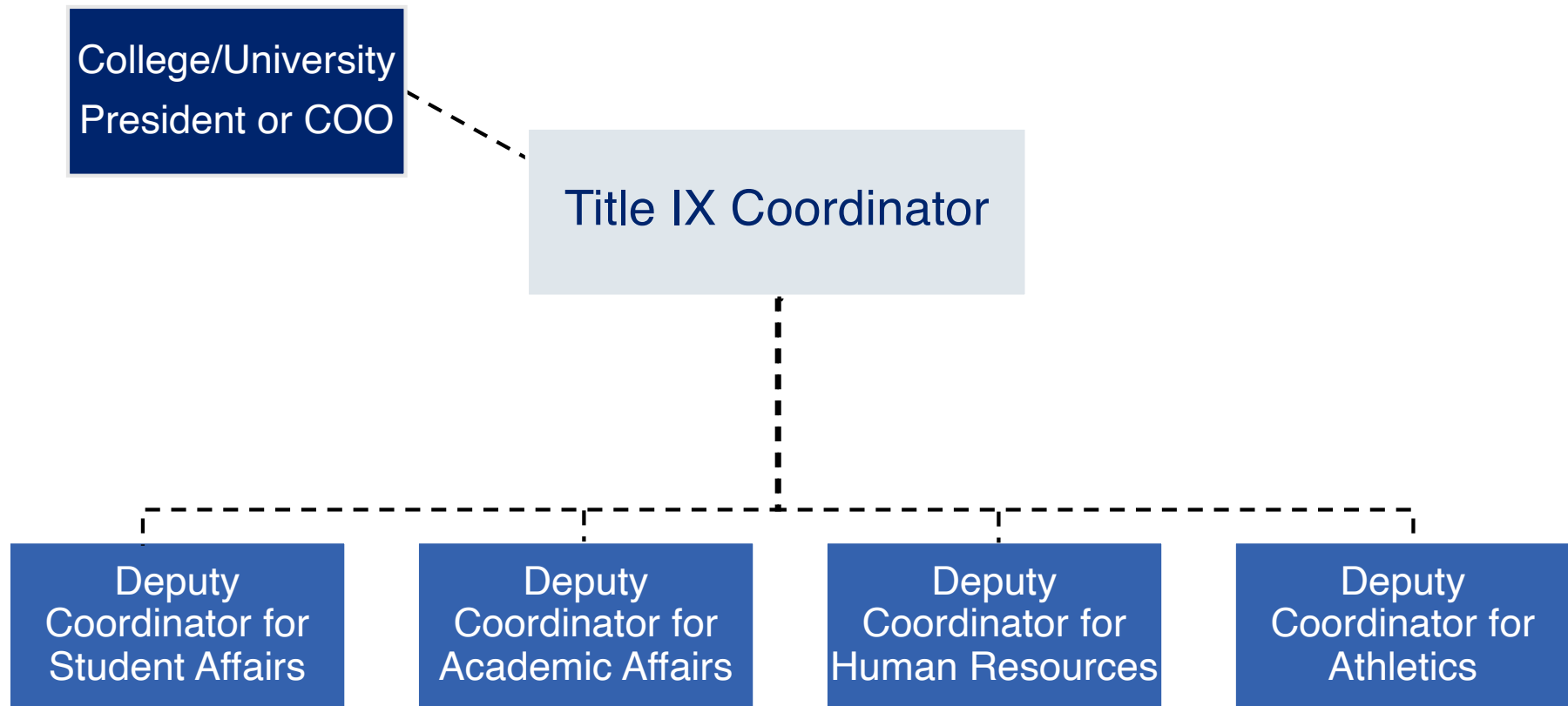
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# FACTORS TO CONSIDER WHEN STRUCTURING YOUR TEAM

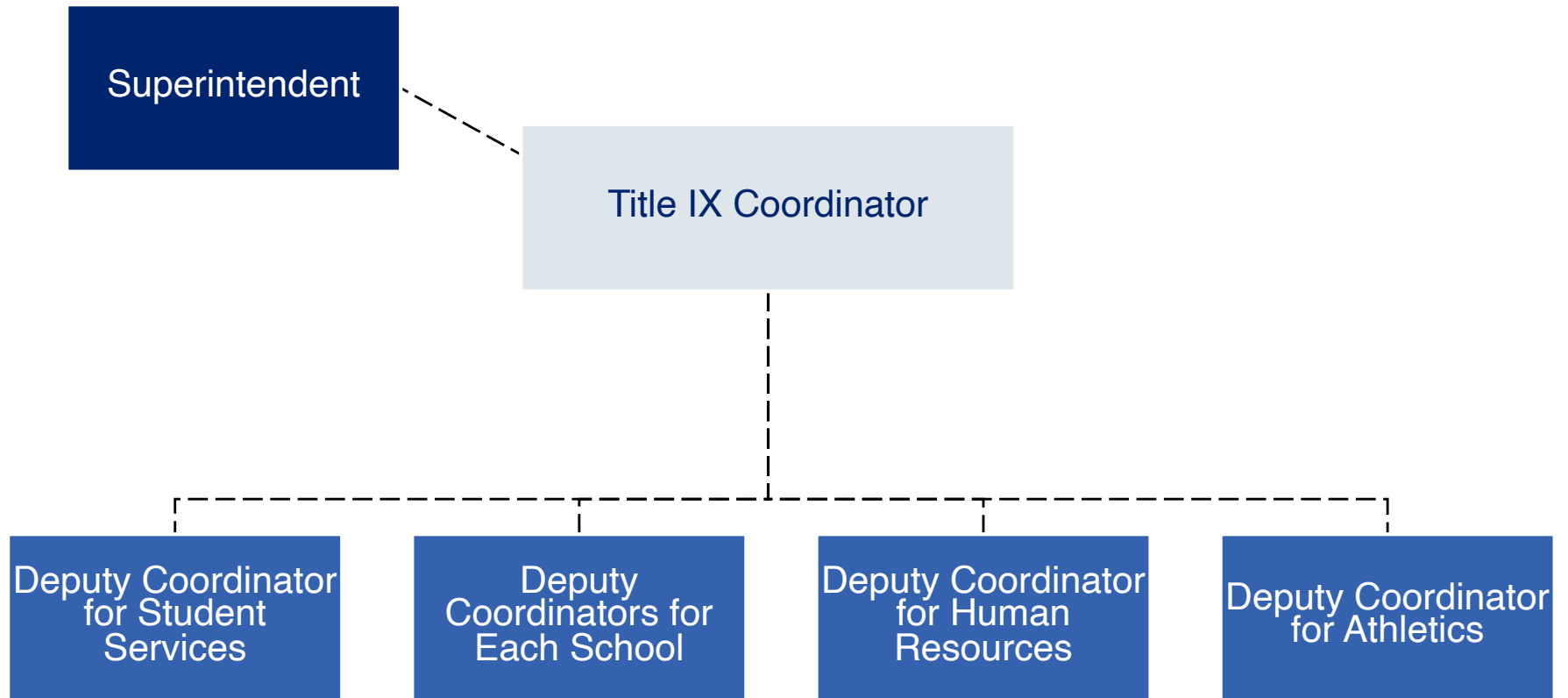
- Individuals' normal work-load and availability
  - Heavy work-load = less availability
  - Consider individuals who have more availability
  - Tenured-track faculty v. tenured faculty
  - Staff
- Inherent conflict of interest or bias
  - Nature of their research and expertise
  - Victim's advocates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



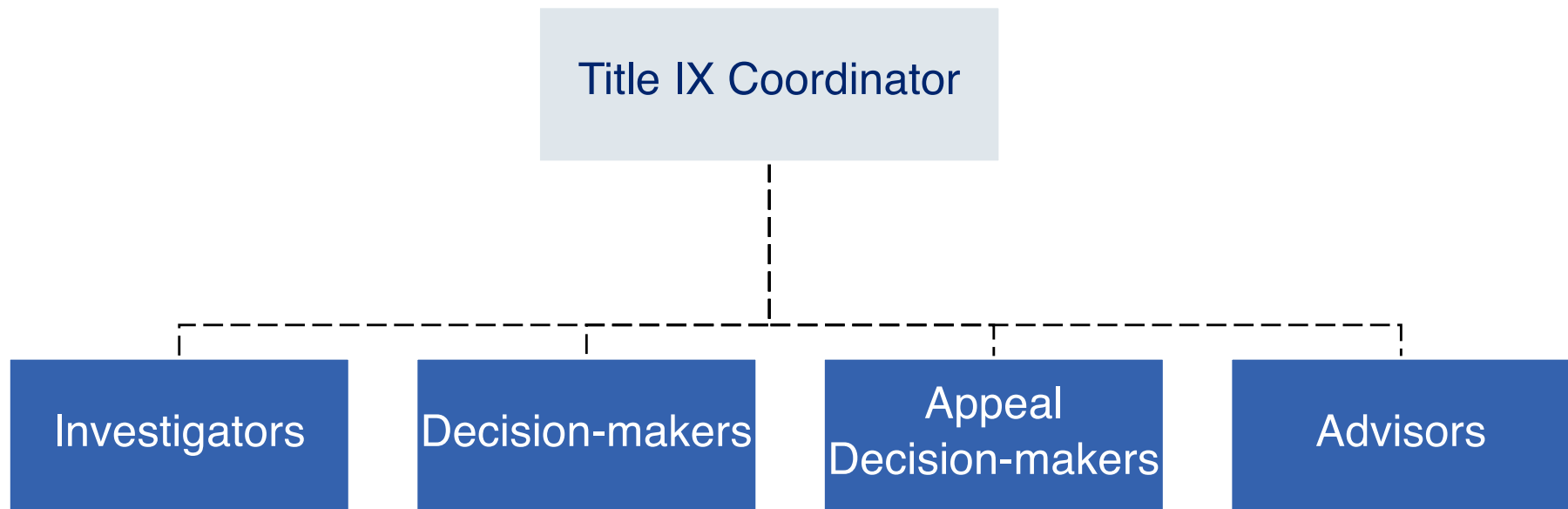
# SAMPLE TITLE IX COMPLIANCE TEAM STRUCTURE - HIGHER EDUCATION



# SAMPLE TITLE IX COMPLIANCE TEAM STRUCTURE – K-12



# SAMPLE TITLE IX GRIEVANCE PROCESS TEAM



# 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?

# TITLE IX EXTENDED TEAM

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

# 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 cases?
  - Complaints of breaches of privacy
- Have you been able to trust and count on them?
- Have you received allegations against them?
- Have they attended required trainings?

# EVALUATING YOUR TEAM (CONT.)

- Do they engage in training or professional development that is not required?
- Are their investigation reports thorough, well-written, and free of biased language and evaluation of information?
- Are their decision rationales complete and appropriate?
- Are they knowledgeable about a variety of intersectional issues that may impact complaint resolution?
- What are other ways to evaluate your Title IX team members?

# 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?



# 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

# 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
- General Counsel:
  - Policy
  - Procedures
  - Review reports/case documents
  - Response to subpoenas, lawsuits, OCR complaints

# DISCUSSION

## LEVERAGING YOUR AUTHORITY

- What have you or your institution done to:
  - Leverage your authority and/or empower your position?
  - Enhance your institutional profile?
  - Get 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?



# FINAL PLANNING

- Title IX
- VAWA
- Prevention and Programming

# TIX REGULATIONS COMPLIANCE CHECKLIST

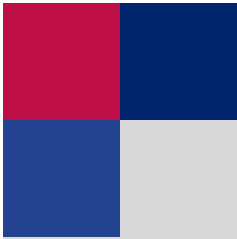
- Notifications of Recipient's Title IX Coordinator
- Notifications that Recipient does not discriminate on the basis of sex in its education programs and activities
- Policy includes §106.30 definitions
- Recipient's response to sexual harassment in accordance with §106.44
- Adopted grievance procedures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

# 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

# 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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