



# TITLE IX UNIVERSITY

## Title IX 101



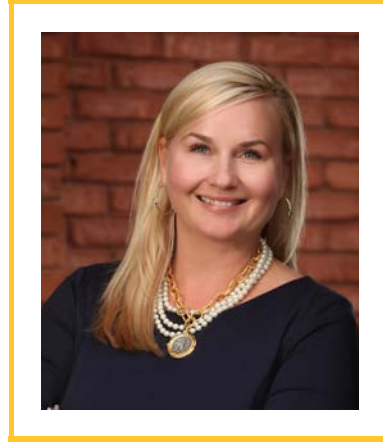
## Introduction, Overview and Title IX law and process



## Introduction

### Courtney Bullard

- Creator, Title IX U
- Education Law Attorney
- Founder, ICS



©Institutional Compliance Solutions 2020 All Rights Reserved



## Disclaimers



- ✓ Not legal advice
- ✓ Introductory module to provide an overview of Title IX and institution's obligations under Title IX

©Institutional Compliance Solutions 2020 All Rights Reserved





## TITLE IX

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

©Institutional Compliance Solutions 2020 All Rights Reserved



### TITLE IX IS:

- Federal law
- Enforced by the Office for Civil Rights (OCR)
- Prohibits discrimination based on sex
- Historically viewed as requiring gender-equity in athletics

©Institutional Compliance Solutions 2020 All Rights Reserved



## WHAT IT IS NOT

Title IX Conduct – What It Is/What It Isn't	
Is or May be Title IX	Is NOT Title IX
<ul style="list-style-type: none"> <li>• Discrimination based on gender</li> <li>• Sexual Harassment</li> <li>• Pregnancy discrimination</li> <li>• Retaliation</li> <li>• Bullying/Cyber-Bullying when it involves sexual misconduct</li> <li>• Hazing when it involves sexual misconduct</li> </ul>	<ul style="list-style-type: none"> <li>• Disability discrimination (ADA)</li> <li>• Employment discrimination based on race, religion, or national origin (Title VII) – note overlap with sex</li> <li>• Student discrimination based on race, religion, or national origin (Title VI)</li> <li>• Age discrimination (ADEA)</li> </ul>

© Institutional Compliance Solutions 2020 All Rights Reserved



## WHAT INFORMS COMPLIANCE OBLIGATIONS?

- New Regulations
- OCR Guidance/Resolution Agreements
- State Laws /Court Cases – Federal and State

© Institutional Compliance Solutions 2020 All Rights Reserved

## QUICK LEGAL PRIMER



Laws



Regulations



Rules



Guidance

© Institutional Compliance Solutions 2020 All Rights Reserved



### RECENT GUIDANCE

- 2001 Revised Sexual Harassment Guidance
- 2011 Dear Colleague Letter (archived)
- 2014 Q & A for Title IX and Sexual Violence (archived)
- 2015 Q & A for Title IX Coordinators
- 2017 Q & A NEW in 2017
- 2020 Title IX Regulations

© Institutional Compliance Solutions 2020 All Rights Reserved

# TIMELINE



© Institutional Compliance Solutions 2020 All Rights Reserved

## ADMINISTRATIVE ENFORCEMENT VS. PRIVATE LITIGATION FOR MONETARY DAMAGES



OCR sets forth administrative enforcement standards for investigating institutions under Title IX. As part of these investigations, OCR does not provide for monetary damages like you see in court cases, rather OCR puts forth regulatory guidance or “sub-regulations”. These federal regulations cannot change existing legislation, but rather inform how legislation is interpreted or enforced.



© Institutional Compliance Solutions 2020 All Rights Reserved

**OPTIONS**

**TITLE IX UNIVERSITY**

**OCR**

**Lawsuit**



© Institutional Compliance Solutions 2020 All Rights Reserved

**MAY**

TUE	WED	THU	FRI
1	2	3	4
8	9	10	11
15	16	17	18
22	23	24	25
29	30	31	

**MAY 6,**  
**2020**  
The Day  
Everything  
Changed





THE LAW

## TITLE IX

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

©Institutional Compliance Solutions 2020 All Rights Reserved



## Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

©Institutional Compliance Solutions 2020 All Rights Reserved







## SEXUAL ASSAULT

**Sexual Assault:** An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system.

A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

**Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

©Institutional Compliance Solutions 2020 All Rights Reserved



## Dating Violence

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- (i) The length of the relationship
- (ii) The type of relationship
- (iii) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

©Institutional Compliance Solutions 2020 All Rights Reserved



## Domestic Violence

Domestic Violence: A felony or misdemeanor crime of violence committed

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

©Institutional Compliance Solutions 2020 All Rights Reserved



## STALKING

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (1) Fear for the person's safety or the safety of others; or
- (2) Suffer substantial emotional distress.

For purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

©Institutional Compliance Solutions 2020 All Rights Reserved





THE LAW

## TITLE IX

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

©Institutional Compliance Solutions 2020 All Rights Reserved



**SEXUAL  
HARASSMENT  
+  
EDUCATION  
PROGRAM  
OR ACTIVITY  
=  
FORMAL TITLE IX  
PROCESS**



# Title IX Applies to.....

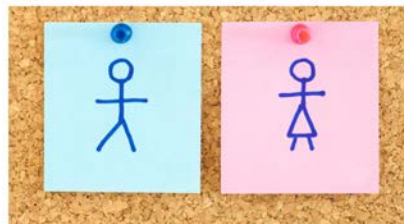


## SEXUAL HARASSMENT



May also include actions motivated by gender or sex, such as:

- Bullying
- Hazing
- Vandalism
- Arson
- Program Equity Decisions, such as:
  - Admission
  - Athletics or Club Participation
  - Hiring
  - Firing
  - Promotion, etc.



## WHAT ABOUT NON TITLE IX SEXUAL MISCONDUCT



Not Education Program/ Activity  
"harassment"

©Institutional Compliance Solutions 2020 All Rights Reserved



## Important Terms

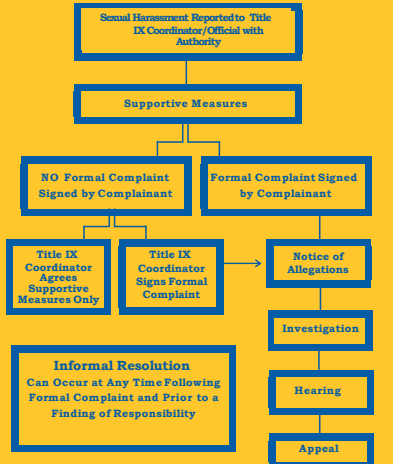
**Complainant:** Individual who is alleged to be the victim of conduct that could constitute sexual harassment

**Respondent:** Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

©Institutional Compliance Solutions 2020 All Rights Reserved



# General Process Flow Chart



\*A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.  
 \*A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at institution or institution is prevented from gathering evidence.



Institutional Compliance Solutions 2020 All Rights Reserved



# Title IX Coordinator



**Title IX Coordinator**

- Investigator(s)
- Decision-Maker(s)
- Appellate Member(s)
- Informal Resolution Facilitators?
- Official with Authority

© Institutional Compliance Solutions 2020 All Rights Reserved

## SUPPORTIVE MEASURES

**defined term:**  
 individualized services provided to a complainant or respondent that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education

© Institutional Compliance Solutions 2020 All Rights Reserved



## **Institution Process vs. Law Enforcement**

© Institutional Compliance Solutions 2020 All Rights Reserved





## Questions???



- ❖ We are here for you!  
([info@titleixu.com](mailto:info@titleixu.com))
- ❖ Contact your Title IX Coordinator

©Institutional Compliance Solutions 2020/All Rights Reserved 