



Association of
Title IX Administrators

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Time with IX: Expanded Title IX Jurisdiction

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Today's Presenters



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2024 Title IX Regulations Litigation

- The 2024 Title IX Regulations are subject to legal challenges across the country
 - Generally, the recent lawsuits are targeting the gender identity provisions and the hostile environment definition
- Opponents of the Regulations are seeking **injunctions** to delay or halt implementation of all or some of the Regulations
 - **Injunction:** A court order requiring an individual or entity to either perform or stop performing a specific action
- Types of injunctions:
 - A **complete injunction** prohibits the Department of Education (ED) from enforcing the 2024 Regulations in its entirety
 - A **partial injunction** prohibits ED from enforcing specified provisions of the 2024 Regulations

2024 Title IX Regulations Litigation

- If a court orders an injunction, that decision may be appealed to a higher court
 - Otherwise, the injunction stays in effect until a trial occurs
- ATIXA anticipates that any injunction decision will be appealed, and some have been already
- If the 2024 Regulations are not enforceable in some or all states as a result of injunctions, schools, districts, and institutions in those states will continue to follow the **2020 Regulations**
- **Note:** Some states also have “Do Not Implement” directives from state officials
 - Independent from any federal lawsuits or injunctions
- Implementation will be unsettled for the foreseeable future
 - Consult legal counsel to determine implementation plans
- Track developments on ATIXA’s Regulations website, www.atixa.org/regs



When does Title IX require us to respond to knowledge of sex discrimination or sex-based harassment?

Title IX Jurisdiction

Title IX Jurisdiction

- The jurisdictional analysis asks:
 - What was the incident? Who was involved? Where and when did it occur?
- TIXC is responsible for evaluating Title IX jurisdiction:
 - Is the conduct of a nature that “may reasonably constitute sex discrimination?”
 - Who is the Complainant?
 - Who is the Respondent?
 - Is the incident part of the institution’s education program or activity?

The 2024 Title IX Regulations broadened the above elements, leading to a likely substantial increase in reports and complaints resolved through the Title IX office or the Resolution Process

What constitutes sex discrimination?

Title IX: Scope

Sex-Based Discrimination

- Inequitable Treatment
 - Sex Characteristics
 - Sex Stereotypes
 - Pregnancy or Related Conditions
 - Sexual Orientation
 - Gender Identity
- Exclusion from Participation

Sex-Based Harassment

- Quid Pro Quo
- Hostile Environment Harassment
- Dating Violence
- Domestic Violence
- Stalking
- Sexual Assault
 - Rape
 - Sodomy*
 - Sexual Assault with an Object*
 - Fondling
 - Incest
 - Statutory Rape

Retaliation

*ATIXA recommends removing these behaviors from policy, as they are covered by the Rape definition and are inconsistent with the Clery Act

Who are the parties?

The Parties

- **Complainant:**

- A student or employee alleged to have been subjected to conduct that could constitute sex discrimination, or
- A person other than a student or employee alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination

- **Respondent:**

- A person alleged to have violated the district/institution's prohibition on sex discrimination
 - Generally, must be within the control of the district/institution

Complaints

Notably, the 2024 Title IX Regulations also permit complaints from individuals who were not impacted by the alleged behavior, which could lead to more complaints

- Individuals who may make a complaint depends on the **nature** of the complaint:
 - **Sex-Based Harassment:**
 - A Complainant, or parent/guardian
 - Title IX Coordinator
 - **Sex Discrimination:**
 - A Complainant, or parent/guardian
 - Title IX Coordinator
 - Any student or employee
 - Any other person participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination

TIXC-Initiated Complaints

In rare instances, a TIXC may initiate a complaint and/or initiate an investigation without the consent of the Complainant

- Only after determining the alleged conduct presents an **imminent and serious** threat to health or safety of the Complainant or another person; **OR**
- The conduct as alleged prevents the institution from ensuring equal access based on sex to its education programs or activities

TIXC-Initiated Complaints

TIXC must consider, at a minimum, the following factors:

- Complainant's request not to proceed
- Complainant's reasonable safety concerns
- Risk of additional discrimination or pattern, if not addressed
- Severity of alleged conduct, including whether removal or other discipline is appropriate
- Parties' ages and relationship, including whether Respondent is an employee
- Scope of the alleged conduct (e.g., pattern, ongoing, impacted multiple people)
- Evidence availability
- Whether the institution could stop and prevent without the Resolution Process



Education Program or Activity

Education Program or Activity

- Within education program or activity
 - Conduct subject to institution's **disciplinary authority**
 - Conduct in a building **owned or controlled by a student organization** officially recognized by a postsecondary institution
- Downstream effects
 - Including off-campus and outside the United States

This is a potentially significant expansion of jurisdiction from the 2020 Regulations



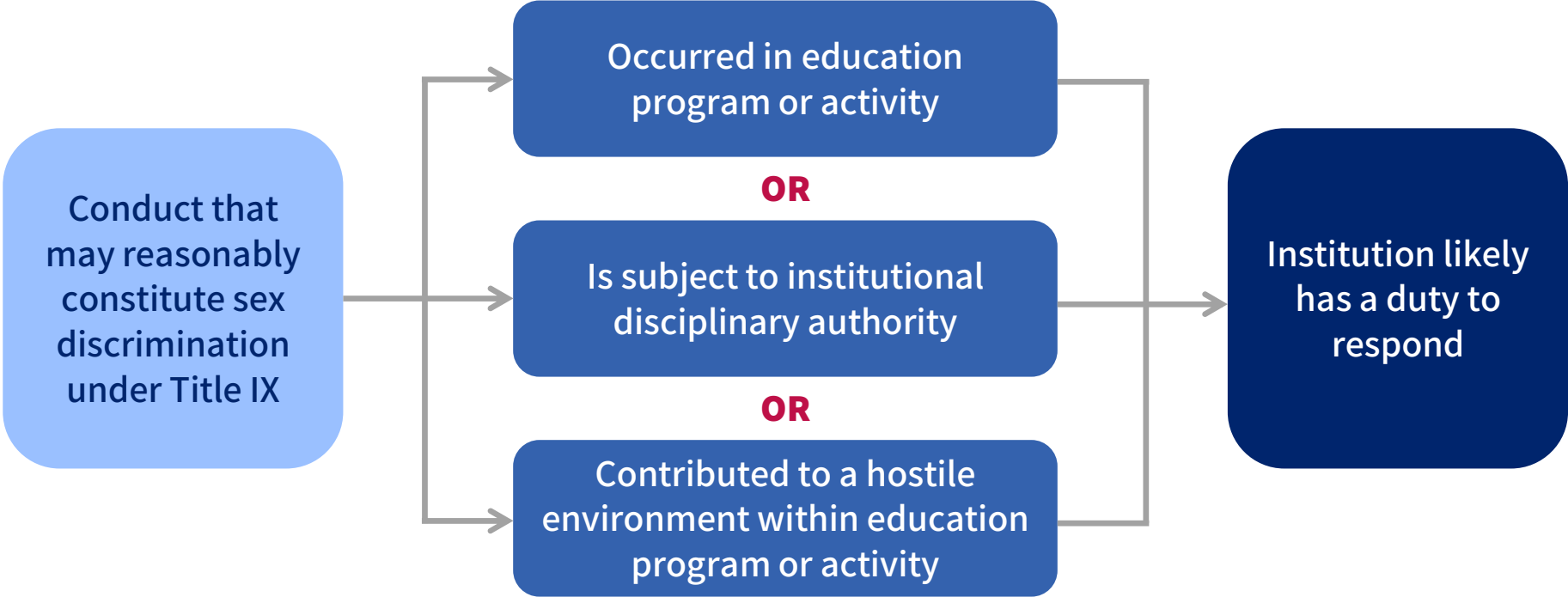
Disciplinary Authority

- “Conduct that is subject to Recipient’s disciplinary authority”
 - Fact-specific analysis
 - “To the extent a Recipient addresses other student misconduct...a Recipient may not disclaim responsibility for addressing sex discrimination that occurs in a **similar context**”
 - Functions as an exception that swallows the rule
- Similar context
 - Ex: Theft or non-sexual assault; other forms of discrimination
- Obligation to **investigate** conduct occurring under institution’s disciplinary authority is only ever as broad as institution’s **reasonable ability** to do so

Downstream Effects

- “Obligation to address sex-based hostile environment under its education program or activity...
 - Even when **some conduct** alleged to be contributing to the hostile environment occurred **outside** the Recipient’s education program or activity”
- Do **not** need to determine whether the conduct occurring outside the program/activity is itself sex-based harassment
 - Alleged conduct outside the program/activity may be relevant to investigation or institutional response
 - No need to independently respond to alleged underlying conduct; remedial response will suffice unless the in-program effects are themselves a policy violation
- The downstream effects rule is going to be largely rendered inapplicable for any school that by policy takes broad off-campus jurisdiction

Visualizing Jurisdiction



Recommendations for Managing Reports and Complaints

Recommendations

- Deputize, train, and delegate
 - Intake
 - Supportive Measures
 - Pregnancy-related adjustments
 - Oversight of certain areas (athletics, students, staff, faculty)
- Develop and use Informal Resolution (IR)
 - May be especially helpful for Hostile Environment Harassment complaints
 - IR does not require a complaint

Recommendations

- Increase staffing
 - Complaint or report audits to help justify increase in resources
- Streamline Title IX office protocols
 - Role clarity and protocols reduce redundancies, inefficiencies, and decision fatigue
- Leverage external experts
 - Role specific assistance (intake, advisor, investigator, decision-maker, etc.)
 - Skill assistance (mentorship, training)
 - Risk management (consulting, work product review)



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Questions?

Thank you!

We hope to see you at our next Time with IX!

Contact us:

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