



Association of
Title IX Administrators

Gender Equity Foundations for Higher Education

Training and Certification Course

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Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Course Introduction



The course focuses on Title IX compliance responsibilities that address sex and gender equity including athletics equity, program equity, pregnancy and related conditions, and LGBTQIA+ protections.



Participants will explore the different types of sex discrimination complaints, as well as the unique challenges investigating or resolving sex discrimination complaints.



Our goal is to provide an in-depth understanding of institutional obligations to address gender discrimination and promote gender equity.

Introduction to Title IX Compliance

Title IX and Equity

- Title IX is a sex and gender equity law
- The principles of equity recognize that not all individuals have access to the same resources and opportunities
 - Equity focuses on increasing access by reducing disparities and barriers in order to increase access
 - Title IX imposes a duty on institutions to stop, prevent, and remedy the inequities created by sex and gender discrimination

Essential Compliance Elements

The requirement to **Stop, Prevent,** and **Remedy** guides Title IX Coordinators in their equity and compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, for both individuals and the community

Title IX Compliance Oversight

Who is the Title IX Coordinator (TIXC)?

- Role mandated by Title IX regulations
- Oversees institutional Title IX compliance
- Responsibilities fall into two categories:
 - Responding to reports or complaints of sex-based harassment and sex discrimination
 - Leading efforts to ensure sex and gender equity across the entire institution



Office for Civil Rights (OCR) Oversight

- OCR enforces Title IX compliance
- Conducts equity compliance reviews
 - Responds to complaints
- Reasons for OCR investigations
 - Athletics equity issues
 - Investigations regarding single-sex programming
 - Failure to accommodate pregnant individuals
 - Failure to stop, prevent, and remedy
 - Failure to investigate



Title IX Coordinator and OCR

- TIXC serves as the point person for OCR inquiries
 - If OCR contacts you, loop legal counsel and other stakeholders, such as public relations, President's office, etc.
- OCR investigations involve document collection and interviews
- Responding to OCR complaints is a resource-intensive process
 - Costs money, time, resources, and reputation
 - Also adds significant levels of stress
- May also contact OCR for technical assistance

Title IX Compliance Oversight Defined

Responsibilities:

- Manage policies and procedures re: sex discrimination and sex-based harassment
 - Including pregnancy discrimination
- Oversee complaint Resolution Process
- Monitor for program equity and oversee remedial and corrective measures
- Ensure institution acts reasonably to **stop, prevent, and remedy**
- Track systemic issues, barriers, or patterns
 - Take remedial action to prevent recurrence
- Publish nondiscrimination policy and grievance procedures
- Publish nondiscrimination notice with TIXC contact information

Title IX Compliance Oversight Cont.

Responsibilities:

- Create and disseminate annual compliance report
- Update institutional leadership on Title IX issues
- Maintain records
- Liaise with institutional legal counsel
- Develop and maintain accurate web and print-based Title IX publications
- Respond to government inquiries
- Assess compliance efforts and program effectiveness

Religiously Affiliated Institutions

- Title IX allows exemption of activities of educational institutions **controlled by religious organizations** to the extent that the application of Title IX would be inconsistent with the religious tenets of the organization
 - Sexual orientation
 - Gender identity
 - Single-sex programming
 - Hiring practices



Title IX Applicability and Discrimination

Retroactivity

- The 2024 Regulations apply **only** to sex discrimination alleged to have occurred **on or after** August 1, 2024
 - For conduct alleged to have occurred prior to August 1, 2024, the 2020 Regulations apply in perpetuity
- Recipients will need to maintain/update policies, procedures, and training that are compliant with the **2020** Regulations and **2024** Regulations

Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Access and Equity

Retaliation

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Discrimination

The act of treating an individual differently, or less favorably, based upon specific or perceived protected characteristics

- Discomfort vs. discrimination

1

**Can be connected
with prejudice**

2

**Can be intentional or
unintentional**

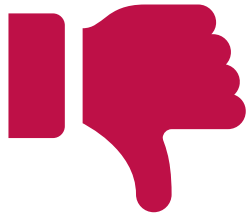
3

**Always based on a
protected
characteristic**

Review: Definitions

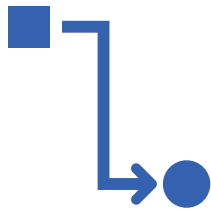
- **Sex discrimination** encompasses discrimination based on:
 - Inequitable treatment based on sex or gender
 - Sex characteristics
 - Sex stereotypes
 - Pregnancy or related conditions
 - Sexual orientation
 - Gender identity
 - Exclusion from participating on the basis of sex or gender identity
 - *De Minimis* harm
- **Retaliation**

Common Types of Discrimination



Disparate Treatment

- Intentional
- Usually requires adverse action
- Affiliation or perception of affiliation with protected characteristic



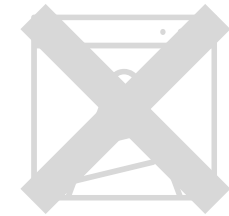
Disparate Impact

- Occurs with unintentional discrimination
- Impact disadvantages certain groups



Harassment

- Quid Pro Quo
- Hostile Environment



Retaliation

- Prohibited if engaged in protected activity
- Suffered adverse academic or employment action

Activity: Is it Discrimination?

Student-Athlete Curfew 1

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want [the] girls to be safe”
- The men's volleyball coach does not make the same request

Is this discrimination?

Student-Athlete Curfew 2

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want [the] girls to be safe”
- The men's volleyball coach does not make the same request

What if the women's coach has never made curfew a team rule or disciplined any curfew violations?

Student-Athlete Curfew 3

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want [the] girls to be safe”
- The men's volleyball coach does not make the same request

What if the women's coach makes 10:00 p.m. curfew a team rule and will discipline or dismiss players that violate curfew?

Visitation Policy 1

- An institution with residence halls has a policy that prohibits students of one gender hosting an individual of another gender in their residence hall room overnight
- A male student complains to housing staff, saying it is not fair that they cannot have their girlfriend spend the night, but a gay student could have their partner spend the night

**Could this be a discriminatory policy?
Why or why not?**

Visitation Policy 2

- An institution with residence halls has a policy that prohibits students of one gender hosting an individual of another gender in their residence hall room overnight
- A male student complains to housing staff, saying it is not fair that they cannot have their girlfriend spend the night, but a gay student could have their partner spend the night

What changes could be made to this policy to avoid being discriminatory?

Visitation Policy 3

- An institution with residence halls has a policy that prohibits students of one gender hosting an individual of another gender in their residence hall room overnight
- A male student complains to housing, saying it is not fair that they cannot have their girlfriend spend the night, but a gay student could have their partner spend the night
- **A few weeks after the student filed his complaint, his Resident Assistant documented him for underage alcohol consumption**
- **The student claims the documentation was in retaliation for his complaint about the visitation policy**

What should the Title IX Coordinator do?

Sexual Orientation, Gender Identity, and Gender Expression

Key Terms

Sex

Chromosomes, hormones, reproductive organs, and genitalia

Gender

Attitudes, feelings, and behaviors that a given culture associates with biological sex

Gender Identity

Internal sense of gender

Gender Expression

Outward expression of gender, often through clothing, behavior, mannerisms, speech patterns, and activities

Transgender

A person whose sense of identity and gender does not correspond with their sex assigned at birth

Key Terms Cont.

Cisgender

Gender identity consistent with sex assigned at birth

Queer

Denoting or relating to a sexual or gender identity that does not correspond to cishet ideas of sexuality and gender

Gender Fluid

One's sense of not having a fixed gender

Sexual Orientation

Sexual or romantic attraction, existing on a continuum (e.g., gay, lesbian, bisexual, heterosexual, asexual)

Nonbinary

Gender identity that is neither exclusively masculine or feminine or is in between or beyond genders.

De Minimis Harm

- In the limited circumstances where Title IX permits different treatment or separation based on sex, an institution **must not** implement differential treatment by means that subjects a person to **more than *de minimis* harm**
- Adopting a policy or practice preventing someone from participating in a program/activity **consistent with their gender identity** violates the *de minimis* harm provision
- Notable exceptions:
 - Religious exemptions
 - Fraternities and sororities
 - Housing (but note state law may be broader)
 - Athletics

Restrooms & Locker Rooms

- May still maintain sex-separate facilities like bathrooms or locker rooms
 - Must permit transgender, transitioning, intersex, non-binary, or gender-variant individuals to **participate** in the education program and **access** facilities **consistent** with their gender identity/expression
 - Develop a protocol to respond to complaints about trans, transitioning, nonbinary, genderqueer individuals using the bathroom according to their gender
- Become involved with capital improvement projects to build or renovate bathrooms, locker rooms, etc. to enhance privacy
- Collaborate directly with impacted individuals to design solutions
 - Document, document, document
- Proposed Athletics Regs are addressed below

Pronouns and Chosen Names

- General rule:
 - Allow students or employees to use chosen name and pronouns
 - Communication among offices and across technology is important
- Practical issues that may present:
 - Privacy concerns
 - Misgendering or dead naming issues
 - Conflict with religious freedom, academic freedom, or First Amendment
 - Technology/recordkeeping systems and pre-programmed gender fields
 - Conflict with state laws

Support Through Transitions

- Gender transitions
 - Social
 - Medical
 - Legal
- Common concerns and current challenges include
 - Discomfort vs. Discrimination
 - Educating communities and constituencies
 - Religious concerns and exemptions
 - Resources, services, and programs based on gender binary
 - State-based legislation

State Law Intersection

- The 2024 Regulations explicitly prohibit discrimination on the basis of sexual orientation (SO) and gender identity (GI)
- State laws vary significantly on this topic
 - Distinctions based on “biological sex”
 - Prohibitions against training on SO, GI, and related topics
- Some state governments have instructed their public schools and institutions to disregard the Title IX regulations
 - Many of these states (20+) have sued to prevent the 2024 Regulations from going into effect, largely as a result of GI protections
- This is an **evolving** situation with TIX administrators caught in the middle; consult with legal counsel

Activity: MC Case Study

Case Study: MC 1

- MC is a first-year student who identifies as a transgender man
- MC is enrolled in the two-year fire academy at Capital City A&M (CCAM)
- The fire academy meets at a university complex outside city limits, as is required by city ordinance based on safety concerns of open flames and other applied learning opportunities in the fire program
- The complex has only one men's bathroom and one women's bathroom, with communal shower stalls in each

Case Study: MC 2

- MC notified the program coordinator at orientation of their gender identity
- During the first term of the program, MC was only at the extended campus once a week for a lecture class
- MC used the men's restroom while attending lectures at the extended campus
- Now, MC will be at the extended campus more often and will need to occasionally use the shower facilities, as other students do, after a live burn or other similar experience that requires exertion or exposure to heat
- MC has concerns that using the showers in the men's restroom will lead to problems, as no one knows MC identifies as a transgender man

Case Study: MC 3

- There is no applicable state law in CCAM's state

What next steps would you take in this situation?

Who would you involve in addressing the situation?

Discrimination on the Basis of Pregnancy or Parental Status

Overview

- Pregnant students **and** employees are protected by Title IX, in addition to other applicable federal and state laws
- Ensure that pregnant and newly parenting individuals are supported as needed to access their education and workplace
- Ensure individuals know and understand their rights under Title IX, including the role of the Title IX Coordinator (TIXC)
- Pregnancy and related conditions are considered from two different lenses under Title IX:
 - Sex Discrimination
 - Temporary Disability



Regulatory Definitions

Pregnancy or Related Conditions

Pregnancy, childbirth, termination of pregnancy, or lactation;

- Related medical conditions; OR
- Recovery therefrom

Parental Status

The status of a person who, with respect to another person who is under the age of 18, is:

- A biological parent;
- An adoptive parent;
- A foster parent;
- A stepparent;
- A legal custodian or guardian;
- In loco parentis with respect to such a person; or
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

Title IX Regulations

A Recipient may not:

Discriminate in its education program or activity against any student or employee on the basis of such individual's current, potential, or past:

- pregnancy
- related condition

Adopt or implement any policy, practice, or procedure which treats a student or employee differently on the basis of current, potential, or past :

- parental,
- family, or
- marital status

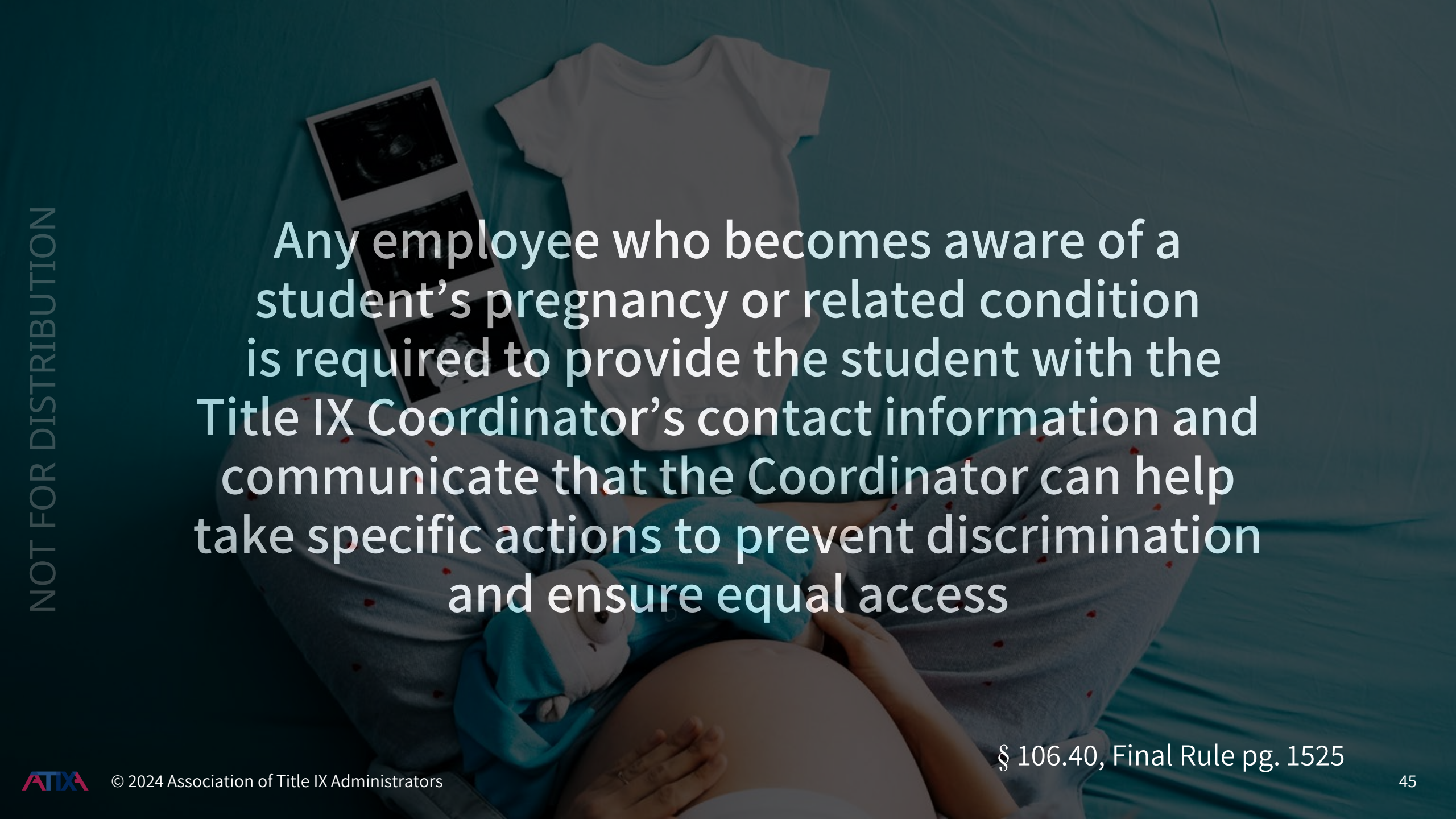
Pregnancy: Title IX's Scope

Individuals and Status:

- Students
- Employees
- Actual, potential, or past pregnancy and related conditions
- Family status
- Marital status
- Parenting status
- “Head of household”

Non-Discrimination Mandate:

- Academics and access to course offerings
- Admissions
- Athletics
- Employment, Recruitment, and Hiring
- Extra-curricular activities
- Facilities
- Financial Assistance
- Funding
- Lactation space and time
- Health Insurance
- Housing
- Leaves of Absence
- Salaries and Benefits

A pregnant woman is lying down, wearing a grey long-sleeved shirt and blue pants. A white onesie is placed on her belly. To the left of the onesie are three ultrasound images. The background is a teal-colored fabric.

Any employee who becomes aware of a student's pregnancy or related condition is required to provide the student with the Title IX Coordinator's contact information and communicate that the Coordinator can help take specific actions to prevent discrimination and ensure equal access

§ 106.40, Final Rule pg. 1525

TIXC is Point Person for Support



Documentation



**Policies,
Practices, and
Procedures**



**Resolution
Process**



Reporting



**Outreach and
Support**



Training

Outreach and Intake

Upon knowledge of pregnancy or a related condition, TIXC should inform the individual of the institution's obligation to:

- Prohibit sex discrimination
- Provide reasonable modifications
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity
- Allow a voluntary leave of absence
- Ensure lactation space availability
- Maintain Resolution Process for alleged discrimination
- Treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes

Reasonable Modifications

- **Reasonable Modifications** to the recipient's policies, practices, or procedures to prevent discrimination:
 - Applies only to students (not employees)
 - Individualized: must consult with the student before offering
 - Voluntary: student may accept or decline each reasonable modification offered
 - If accepted, institution must implement
 - Fundamental alteration of education program or activity is **NOT** reasonable
- OCR emphasizes the importance of consulting with a student to meet their individualized needs in a prompt and effective manner
- Consider partnering with disability services

Reasonable Modification Examples

Not all reasonable modifications are appropriate for all contexts, but could include:

Breaks During
Academic
Activities

Excusing
Intermittent
Absences

Online or
Homebound
Participation

Providing Course
Flexibility

Accessing
Alternate Parking

Counseling

Adjusting
Physical Space

Arranging
Elevator Access

Privacy and Recordkeeping

- Consult with legal counsel about recordkeeping and sharing practices
- Consider whether to maintain records of:
 - Initial request/contact
 - Reasonable modification information
 - Consultation with disability/accessibility services (if applicable)
 - Notifications
 - Complaints, Investigations, and Resolutions
- Medical records receive at least the same privacy as other Title IX documents
 - Limit access accordingly
- Education and employment records are subject to subpoena

Lactation Space and Time

Ensure student and employee access to a lactation space that is **functional, appropriate, and safe:**

- A space other than a bathroom, that is:
 - Clean
 - Shielded from view
 - Free from intrusion from others
 - Available for expressing breast milk or breastfeeding as needed



Activity: Sasha Case Study

Case Study: Sasha

- Sasha is a sophomore theatre major and just found out she is pregnant
- Sasha is having a very rough first trimester and is having to miss a lot of rehearsal time for a play in which she was recently cast as the lead role
- Professor Alexa, Sasha's Acting II instructor and the director of the production Sasha is in, has a very strict attendance policy when it comes to missing rehearsals
- Professor Alexa's policy prohibits a student from missing more than two rehearsals, otherwise they are removed from their role
- Sasha has now missed her third rehearsal and has been removed from the lead role and the play altogether

Case Study: Sasha Cont.

- Sasha is upset that she has been removed from the cast and reports to the TIXC that she is being discriminated against based upon her sex and pregnancy status
- Professor Alexa states that Sasha's removal has nothing to do with her sex or pregnancy status and has everything to do with the attendance policy which is applied equally to all students in productions
- Furthermore, according to the national theatre accrediting body, each production must include a minimum of twenty rehearsal hours for each actor prior to the first full dress rehearsal in order for the play to be considered of educational quality, and for it to count toward the student's degree requirements

Case Study Discussion: Sasha

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

What should the Title IX Coordinator do?

Title IX & Disability

Equity and Disability Laws

- Section 504 of the Federal Rehabilitation Act
 - Section 504 and Title IX share similar language
 - Section 504 protects individuals from discrimination on the basis of their disability
- Title IX Coordinators and Section 504/ADA Coordinators share similar responsibilities
 - Ensuring compliance with anti-discrimination laws
 - Publication of non-discrimination notice
 - Oversight of a grievance process
 - Investigation and resolution of grievances

Key Points

- TIXC and ADA/Section 504 Coordinator may be the same person
- ADA/Section 504 Coordinator should **not** be the same person as the accessibility/disability services coordinator
 - Their duties would create a conflict of interest
- TIXCs often navigate disability accommodations
 - Should have working knowledge of accommodation process
 - Communication and collaboration will smooth overlap between processes
- TIXCs should consider consulting with disability services professionals early in the Resolution Process, as needed
 - Supportive measures, Advisors, etc.

Title IX and Athletics

Title IX and Athletics Overview

- Since the 1970s, Title IX has spotlighted athletic program equity
 - Accommodation of interests and abilities
 - Equitable distribution of resources
 - Equitable treatment
- TIXC provides oversight, may delegate
 - Senior Woman Administrator (NCAA)
- Compliance requirement applies to
 - Intercollegiate and interscholastic athletics
 - Intramurals
 - Club sports



Accommodating Interests and Abilities: Three-Part Test

Part 1: Opportunities for males and females are **substantially proportionate** to their respective enrollments

Part 2: Where one sex has been underrepresented, a **continuing practice of expansion** responsive to interests and abilities of underrepresented sex

Part 3: Where one sex is underrepresented and there is no continuing practice of expansion, demonstrate that interests and abilities of underrepresented sex have been **fully and effectively accommodated** by present program

Equitable Treatment: “The Laundry List”

Equipment &
Supplies

Scheduling

Locker Rooms
& Facilities

Housing &
Dining

Coaching

Scholarships

Publicity

Travel &
Per Diem

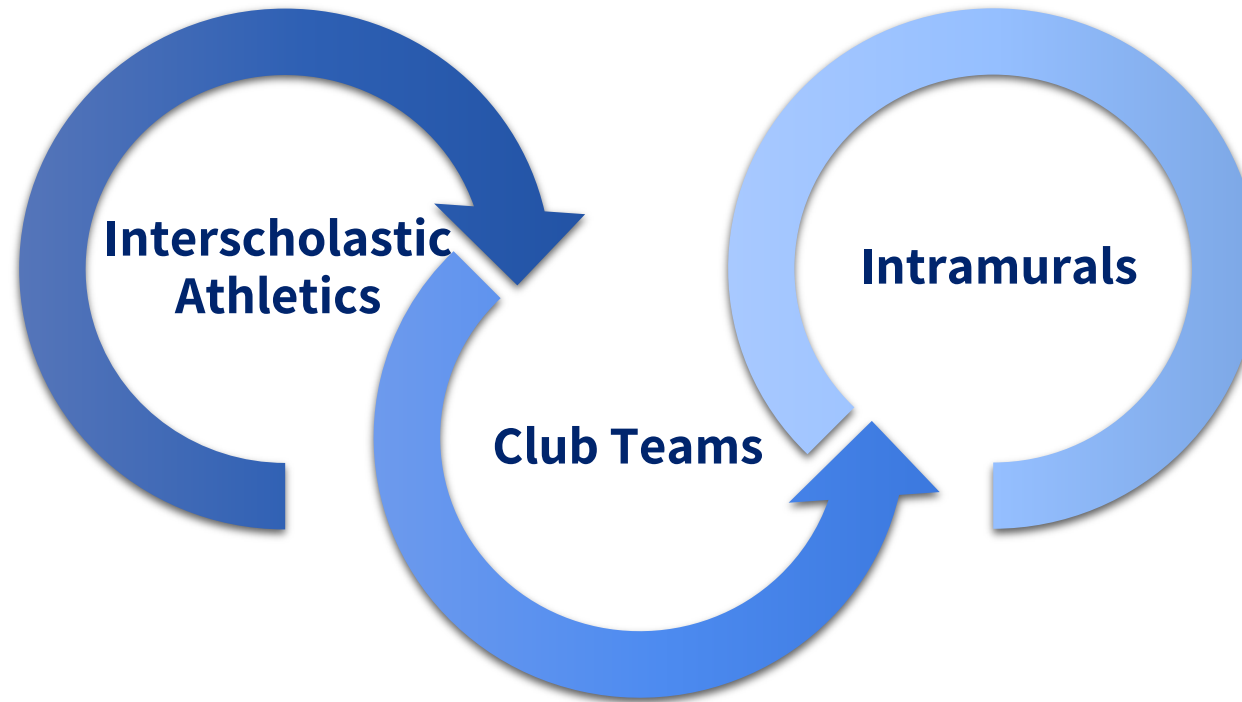
Medical and
Training
Services

Tutoring

Recruitment

Support
Services

Title IX and Athletics Explained



Three-Part Test and the 13 program components are typically **not** as problematic for Intramurals and clubs because those programs tend to be self-initiated with fewer institutionally-provided benefits

Common Areas of Concern

- Eliminating teams
- Scholarship funding
- Fundraising/Donations from booster clubs or donors
- Hostile environment sex-based harassment complaints
- Inequitable facilities or equipment
- Scheduling of games or practice time
- Removal from team for Title IX reasons

Athletics NPRM

- The Department of Education did **not** include its rule on gender identity and athletic participation with its 2024 Final Rule
 - Unlikely any rule will be finalized prior to 2024 election
 - Athletics exempted from *de minimis* provision



Athletics & Gender Identity

- Proposed Regulations
 - If a Recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level:
 - be substantially related to the achievement of an important educational objective, and
 - minimize the harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.

Effect of the Proposed Rule

- The proposed rule effectively prohibits categorical bans applied to entire groups of student-athletes based on gender identity:
 - Examples of Prohibited Laws and Policies:
 - A state law that would require that all students participate on athletic teams consistent with their sex assigned at birth
 - A state law that prohibits all student-athletes who are trans girls or trans women from participating on girls' or women's athletic teams
 - A policy that requires all prospective trans female student-athletes to submit to hormonal testing but does not require the same of trans male or cisgender student-athletes

Single-Sex Programs and Facilities

Single-Sex vs. Preferred Sex Programs

Single-Sex Program

- Activity or program designated men-only or women-only
 - “Women in STEM”
 - “Male Empowerment Network”
- Members of each sex are only permitted to participate in programs designed for their sex

Preferred Sex Program

- Open to all, but are advertised or named to suggest participation by one sex is preferred
- **Best Practice** approach unless all programs are open to all

Exceptions

- Title IX prohibits sex discrimination in education programs or activities receiving federal financial assistance
- There are several **exceptions** that may apply to higher education institutions
- Exceptions may depend upon whether the institution:
 - Is public or private
 - Is religiously affiliated
 - Provides “significant assistance” to a single-sex program
 - Provides separate but comparable facilities or programs for men and women

Notable Exceptions

- Social Fraternities and Sororities
- Institutions with a religious exemption
- Admissions at private institutions
- Athletic teams
 - Subject to broader equity analysis
- Housing
- Restrooms and locker rooms
 - May have sex-separate restrooms and locker rooms, but permit access based on gender identity



Single-Sex Scholarships

- OCR has resolved a few scholarship-based complaints recently
 - Single-sex scholarships are **not** an exception to Title IX
- Institutions may **not**, on the basis of sex:
 - Provide different amounts or types of financial assistance
 - Assist any organization or person providing aid in a discriminatory manner
 - Apply any rule that treats people differently regarding marital or parental status
- Limited “safe harbor”
 - Wills, trusts, bequests, acts of foreign governments

Activity: Hank Case Study

Case Study: Hank 1

- Hank is a student who frequently uses the institution's open gym hours to lift weights and use the cardio machines
- Recently, Hank was turned away from the gym because he arrived during Women Only Wednesdays— a time period on Wednesday evenings that the gym is reserved for women only
- Hank filed a complaint alleging that Women Only Wednesdays is a discriminatory practice

Case Study: Hank 2

- In his complaint, Hank suggested three resolution options:
 1. Maintain a women's only time but introduce a men's alternative for fairness
 2. Keep the women's only time but charge men less in student fees for the time they cannot access the facility
 3. Do away with single-sex gym times altogether

Case Study: Hank 3

- The female students who originally petitioned the gym staff to create Women's Only Wednesdays becomes aware of Hank's complaint
- They inform the TIXC that the women's only gym time is necessary because when men are in the gym with women, they create a hostile environment through the comments they make and by staring at women who are exercising

How should the TIXC address this complaint?

Which, if any, of Hank's suggested solutions would best resolve this situation?

Monitoring and Gender Equity Audits

Monitoring & Barrier Analysis

- TIXC has ongoing obligation to **monitor** the program/activity for barriers to reporting
 - Take steps reasonably calculated to address such barriers
- Examples:
 - Reporting process accessibility
 - Confusing or delayed procedures
 - Difficulty finding information or contacting Title IX staff
 - Perceptions of bias among staff or in the process

Barrier Analysis Tools

- Climate assessments and surveys
- Micro surveys and exit surveys
- Focus group data
- Training and education about reporting obligations, but especially for common sources of reporting
- Benchmark practices against peer institutions, leverage information and relationships from professional associations
- ATIXA Roadmap Tool

Leveraging Institutional Presence



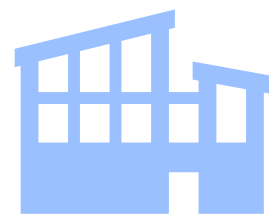
VISIBILITY

- Location
- Involvement
- Presence in spaces and places



COLLABORATION

- Committees
- Programming
- Grants and Research



RELEVANCE

- Gender equity broadly
- Space planning
- Curriculum
- Services
- Policies



ACCESSIBILITY

- Email and phone responsiveness
- Language and tone

Gender Equity Audits

- Audits are intermittent assessments to measure compliance and to monitor barriers
- Factors such as cost and personnel capacity impact regularity

Athletics

Scholarships and
Financial Aid

Reports/Complaints

Hiring,
Compensation,
Evaluation, and
Promotion

Single-sex Facilities
or Programs

Discussion: Gender Equity Audits

Discussion Questions:

- Have you ever conducted an equity audit?
 - What was your process?
 - What types of information did you collect?
- Do you have an audit schedule to conduct routine audits?
- Have you identified areas or functions of the institution that would benefit from routine equity audits?
- Have you ever used an equity monitor to address audit result implementation, or to ensure compliance with a settlement, resolution, or verdict?

Title IX Resolution Process

Title IX Grievance Process Overview

INCIDENT

- Formal Complaint/ Notice to Title IX Coordinator (TIXC)

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/ Formal Resolution

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/ Comment
- Follow Up
- Final Report

DECISION-MAKING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies
- Option for Live Hearing

APPEAL

- Appeal Grounds
- Determination and Rationale

Two-Track Resolution Process

- Which Resolution Process applies depends on the identities of the parties
 - Section 106.45 provides a civil rights Resolution Process for resolving complaints
 - Section 106.46 incorporates § 106.45 and adds some due process protections
 - Retains many, but not all, features of the formal process from the 2020 Regulations
- Two separate processes are permitted but **not** required
 - If using only one, it must be § 106.46

§ 106.45	§ 106.46
■ Sex discrimination complaints that are not sex-based harassment ■ Sex-based harassment complaints that do not involve a post-secondary student	■ Sex-based harassment complaints involving a post-secondary student Complainant and/or Respondent

Title IX Resolution Process Overview

Prompt Resolution

- Reasonably prompt timeframes for “major stages” of grievance process
 - Title IX regulations do not define “reasonably prompt”
 - 60 business days is a good guide for a moderately complex investigation
- Process may take longer than expected
 - Communicate with parties about delays
 - Reasonable extensions permitted
- Provide anticipated timelines for each proceeding



Title IX Grievance Process Overview

Equitable Resolution

- Treat all parties equitably
- Ensure that all parties have opportunity to fully participate in the grievance process
- Ensure that all Title IX team members operate without bias and/or conflict of interest



Types of Discrimination Complaints

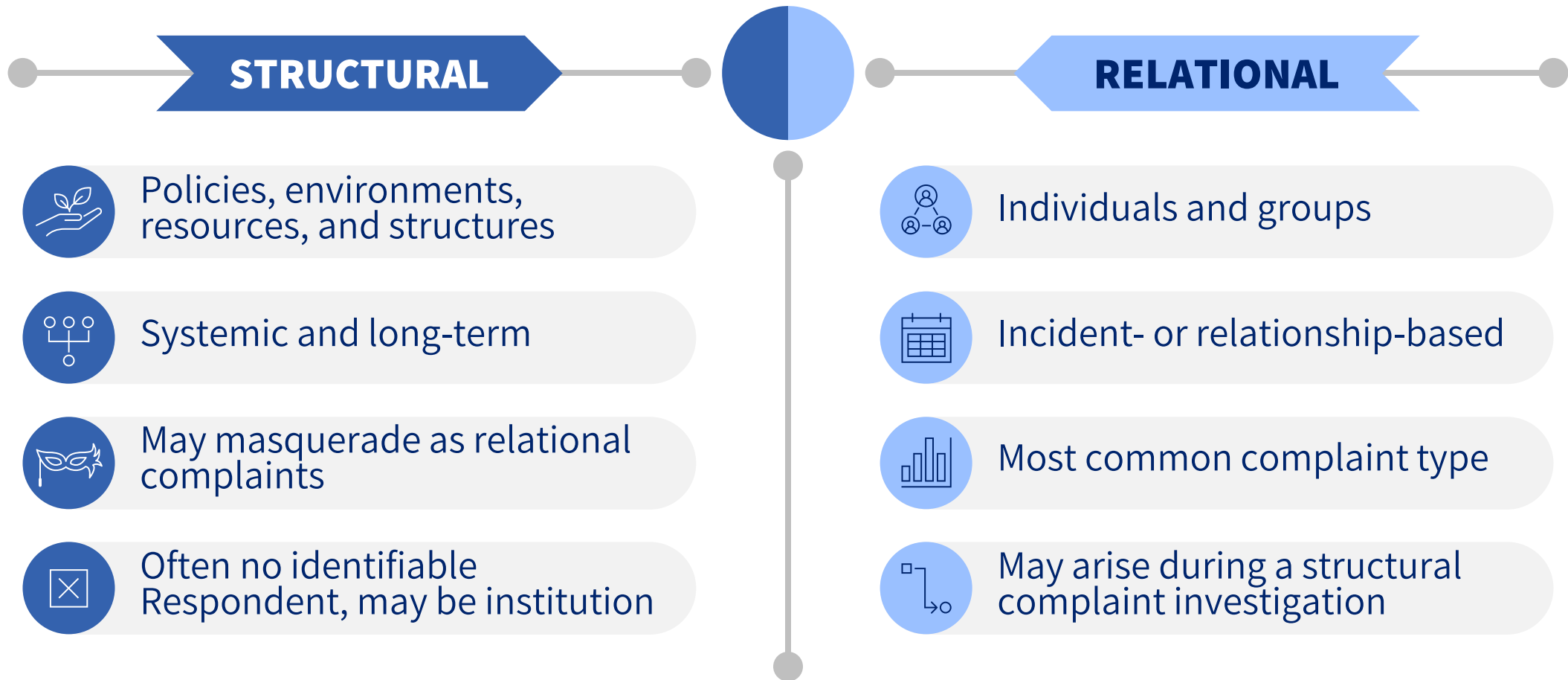
Disparate Treatment

Sex-Based Harassment

Disparate Impact

Retaliation

Types of Complaints



Disparate Treatment

Disparate Treatment exists when an individual treats another person **differently**, or takes an **adverse action**, because of that person's identity, such as sex or gender

Examples:

- Hiring
- Promotion/Performance reviews
- Pay
- Responsibilities/Job assignments
- Shifts
- Access to resources
- Athletics
- Grading
- Program access
- Student conduct outcomes
- Housing access
- Guest visitation policies

Adverse Action Examples

- Not hiring/demotion/termination
- Promotion/Tenure denial
- Poor performance reviews
- Less desirable work assignments
- Work-related threats
- Supervisory responsibility removal
- Abusive verbal or physical behavior
- Discipline
- Student leadership opportunity denial
- Unfair grading
- Pay and compensation disparity
- Resource inaccessibility
- Remedy inaccessibility
- Opportunity denial

Disparate Impact

- Disparate impact exists when “neutral” policies and practices are alleged to have a discriminatory impact
- Complex investigations
 - Often examines culture/climate
- High level statistical analysis
 - Validity studies
 - Programmatic necessity
- Examples: effect of hiring, admissions, or disciplinary processes, even when conducted in a facially neutral way
- Focuses on remedies, not sanctions



**Policy
Handbook**

Sex-Based Harassment

- Quid pro quo
- Hostile environment
- Sexual assault
- Dating violence
- Domestic violence
- Stalking

Unlike other types of sex discrimination, allegations of sex-based harassment have **additional** Resolution Process requirements when a post-secondary student is involved



Retaliation

Defined as:

- Intimidation, threats, coercion, or discrimination against any person
 - By the Recipient, a student, or an employee, or other person...
 - “For the purpose of interfering with any right or privilege under Title IX,” **OR**
 - “Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in the Title IX grievance process”
- Institutions **may** require employees to support the Resolution Process as witnesses
 - Still cannot require students to participate
 - Retaliation allegations should be resolved under the § 106.45 Resolution Process

Complaints & Parties

Complainants

- For complaints of sex discrimination, any student, employee, or **any other person who is participating or attempting to participate** in the institution's education program or activity **at the time** of the alleged behavior
 - In addition to a traditional Complainant or the Title IX Coordinator
- Expands the definition of "Complainant" significantly



TIXC-Initiated Complaints

In rare instances, a TIXC may sign 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 other person; **OR**
- The conduct as alleged prevents Recipient from ensuring equal access based on sex to its education programs or activities

TIXC-Initiated Complaints Cont.

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' age and relationship, including whether Respondent is an employee
- Scope of the alleged conduct (e.g., pattern, ongoing, impacted multiple people)
- Availability of evidence
- Whether the Recipient could stop and prevent without the Resolution Process

Institution as a Respondent

- The 2024 Regulations do **not** consider the institution as a Respondent for complaints of sex discrimination alleging a discriminatory policy or practice
 - Some provisions will not apply
 - Per the Preamble, “certain procedural rights and steps afforded to individual Respondents” do not apply
 - However, the Preamble does not indicate which provisions
- In many circumstances, upon notification of a potentially discriminatory policy or practice, the Title IX Coordinator may take **prompt** and **effective** steps to end the discrimination and prevent its recurrence
- TIXC will have to use their judgment to determine if an investigation is needed, if remedies can be directed by the TIXC, or if some fact-finding is necessary before action can be taken

Reporting

Reporting and Notification

Regs expand reporting to include Sex Discrimination issues

EMPLOYEE ROLE	NOTIFY TIXC	PROVIDE TIXC CONTACT INFO
Confidential Employees	NO	YES
Employees with the authority to institute corrective measures	YES	YES
Employees with responsibility for administrative leadership, teaching, and advising	YES	YES
All other employees who are not confidential employees	CHOOSE ONE OR THE OTHER	

Confidential Employees

- Employee whose communications are privileged or confidential (at the time of disclosure) under Federal or State law
- Employee whom the institution has designated as confidential for providing services related to sex discrimination
- Institutional Review Board-approved human-subjects research study, designed to gather information about sex discrimination



Mandatory Reporting

- ATIXA recommends that institutions designate **all employees** as **mandated reporters** (except for **confidential resources**) under Title IX
 - Ensures information gets to those trained to respond
 - Enables institution to best support individuals
 - Supports tracking patterns
 - Provides for simpler, uniform, and universal training and reporting
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy
- Designate a sufficient number of employees as confidential, and note within Policy, to ensure that reporters have options

Jurisdiction

Review: Jurisdiction

- Education program or activity in the United States
- May reasonably constitute sex discrimination
- Identity of Complainant
- Subject to disciplinary authority
- Downstream effects of external misconduct
- Applies to both student and employee complaints



Education Program or Activity

- Within education program or activity
 - Conduct subject to Recipient'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



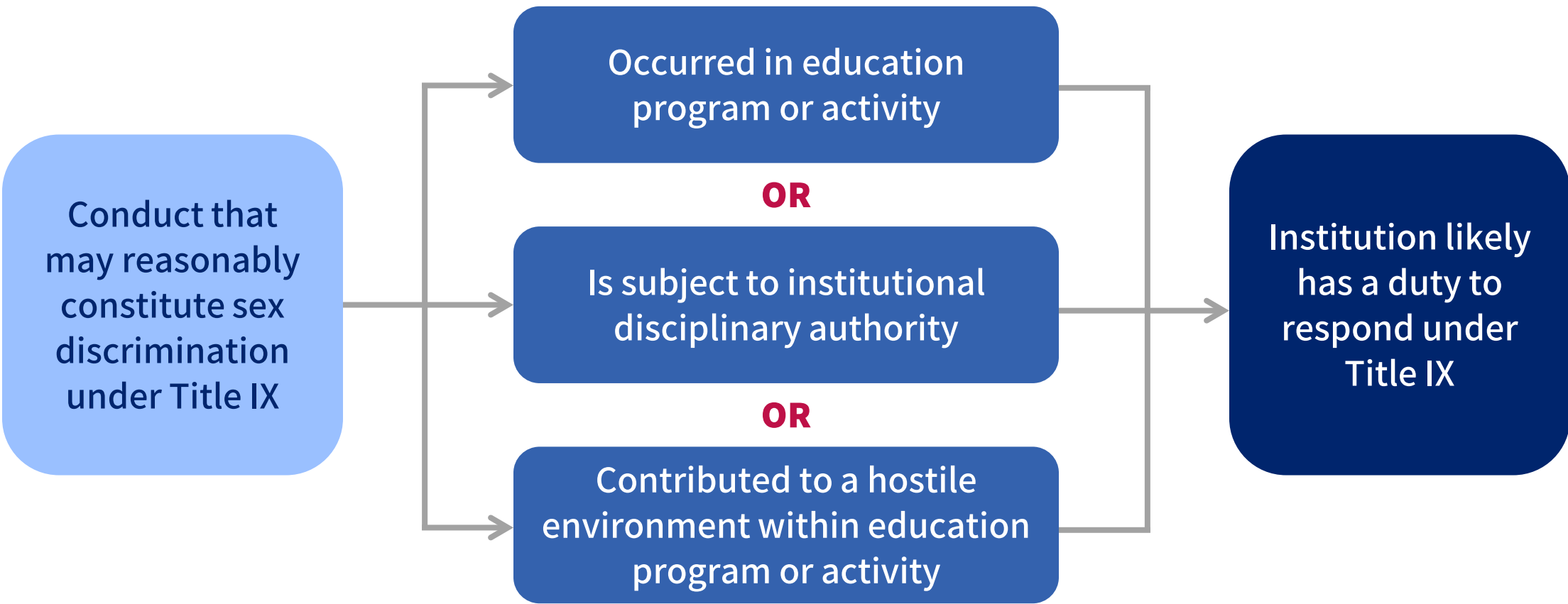
Disciplinary Authority

- “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**”
- 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 recipient’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 recipient response
 - But no need to independently respond to alleged underlying conduct, unless institution takes broad off-campus jurisdiction by policy

Visualizing Jurisdiction



Dismissals

All dismissals involving conduct occurring after August 1, 2024, are **discretionary**, and may be used under the following circumstances:

- Unable to identify Respondent after **reasonable** steps to do so
- Respondent no longer participating in education program or employed by Recipient
- Complainant withdraws all or a portion of complaint and any remaining conduct would not be discrimination under Title IX
- Alleged conduct, if proven, would not be discrimination under Title IX
 - Recipient must take reasonable efforts to clarify allegations before dismissal

Dismissals Cont.

Upon dismissal of a complaint, institution must:

- Notify Complainant
 - Notify Respondent only if Respondent has already been notified of complaint
 - Offer supportive measures, as appropriate
- Inform Complainant of their right to appeal
 - Also inform Respondent if they have been notified of the complaint
- Take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur

Dismissal Appeals

- Implement appeal procedures equally
- Only Complainant has right to appeal dismissal if Respondent is not notified of the complaint
- If Respondent knows of complaint, both have equal right to appeal
- Appeal Decision-maker must be trained and **not** have taken part in investigation of allegations or dismissal of complaint
- Provide parties a reasonable and equal opportunity to make a statement
- Notify parties of the appeal result and rationale
 - No requirement of a **written** notification

Outreach and Intake Process

Outreach and Intake Defined

- After receiving a report/knowledge, TIXC (or designee), should always reach out to the Complainant
 - Best practice and regulatory requirement
- **Outreach** includes:
 - Introduction to Title IX and staff
 - Reason for the outreach
 - Offer to meet/speak over the phone; include right to Advisor
 - Available resources and resolution options, including how to make a complaint
 - Discuss supportive measures and resources
 - Explain options to report to law enforcement
 - Follow up in writing with resources and information

Outreach and Intake Defined Cont.

- **Intake** includes:
 - Overview of the process
 - Having written materials to reference and for parties to take with them
 - Follow up with an email containing these materials, too
 - Exploring facts, but not interviewing
 - Needed for initial evaluation
 - Discussing Supportive Measures
 - Discussing Complainant's options
 - Answering questions
 - **DO NOT** answer the question “What should I do?”

Supportive Measures

Supportive Measures Defined

- Individualized measures designed to:
 - Restore or preserve access
 - Protect safety of parties or educational environment
 - Provide support during grievance procedures
- May **not unreasonably** burden a party
- May **not** be for **punitive** or **disciplinary** reasons
- Must be **without** fee or charge

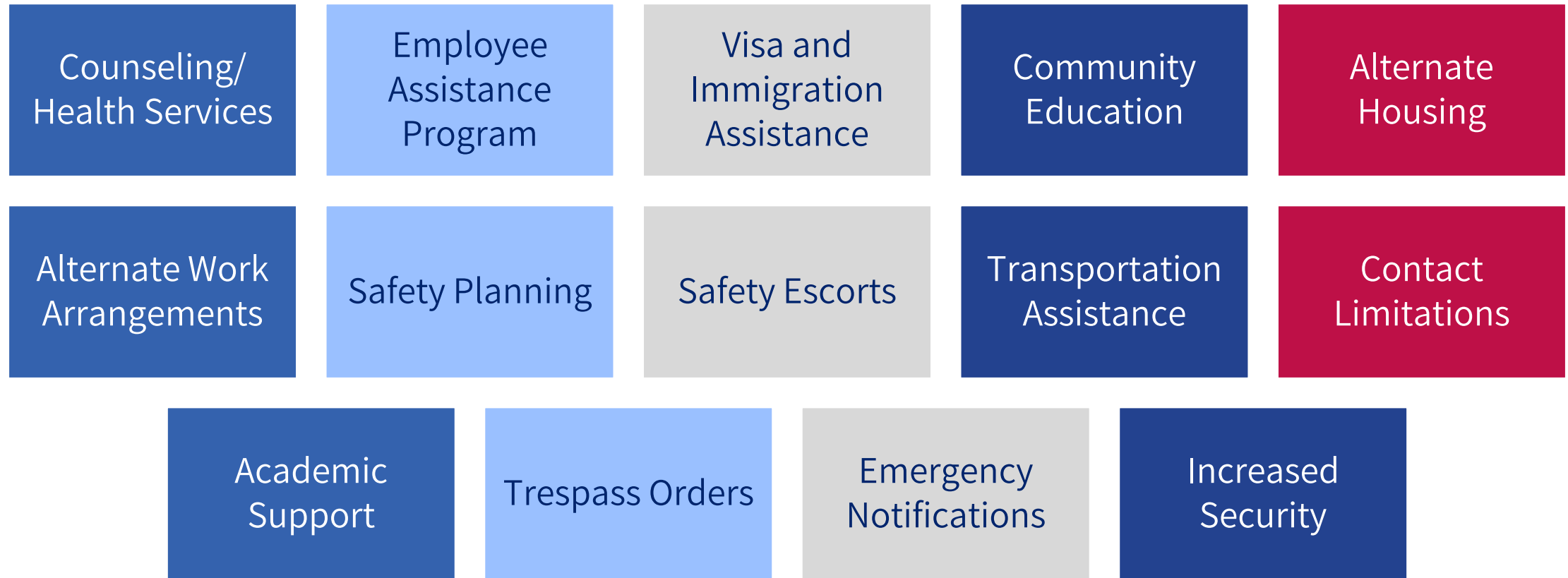


Supportive Measures Defined Cont.

- Institution may deem which supportive measures are **reasonably available**
 - Must provide a **timely opportunity** to seek modification, reversal, or denial
 - An impartial employee, uninvolved in initial decision, must have authority to modify or reverse
 - Review considers whether the original decision was **inconsistent** with the definition of supportive measures
 - Permit additional opportunity to contest if circumstances change materially
 - Disclosure about supportive measures is need-to-know
- Measures may be continued, modified, or ended at conclusion of the Title IX Resolution Process

Supportive Measures Examples

NOT FOR DISTRIBUTION



Activity: Supportive Measures

Activity: Supportive Measures 1

- A graduate student has on-campus employment in a research lab
- The research necessitates having a researcher in the lab around the clock
- The professor responsible for managing the lab only assigns male students to monitor the lab after 9:00 p.m.
- When a male student asked the professor about it, the professor said, “I have daughters and would not want them walking through a parking lot by themselves late at night”
- The male student reported the professor for sex discrimination and now receives half as many shifts

What supportive measures should be considered?

Activity: Supportive Measures 2

- A pregnant student alleges that their chemistry professor will not discuss any accommodations or modifications to her chemistry lab course, insisting she complete the course as designed
- The student is concerned about exposure to chemicals in the lab and the date of their final exam, which is right around her due date

What supportive measures should be considered?

Activity: Supportive Measures 3

- A transgender student is repeatedly misgendered by their major's sole academic advisor
- The academic advisor insists they do not mean to offend their student, but their religious beliefs prevent them from using preferred pronouns

What supportive measures should be considered?

Informal Resolution

Informal Resolution 1

- Requires consent of TIXC and voluntary consent of the parties
- Available without a complaint
- Must provide Notice of Allegations and Informal Resolution information
- Available any time prior to decision
- Parties may withdraw from IR at any time prior to agreement
- May offer for complaints between an employee and student
- Parties precluded from initiating or resuming investigation and resolution process if agreement is reached

Informal Resolution 2

- Form of IR not defined (e.g.: mediation, shuttling, Restorative Justice, etc.)
- Resolution may include restrictions the institution could have imposed as disciplinary sanctions or remedies
 - Binding only on the parties
- IR Facilitator:
 - May **not** serve as Investigator or Decision-Maker (DM)
 - Must be trained
- Expanding IR options may help with increase in reporting

Informal Resolution 3

- Parties must receive notice of:
 - Allegations
 - IR procedures
 - Right to withdraw from IR and initiate/resume Resolution Process
 - IR agreement would preclude initiating/resuming formal process arising from the same allegations
 - Potential terms in an agreement
 - Records creation and sharing practices

Section 106.45 Investigations

Section 106.45: Basic Requirements

- **Sex Discrimination complaints can all be addressed using § 106.45, if desired**
- Treat parties equitably
- Require TIXCs, investigators, or Decision-makers have **no** conflict of interest or bias
 - DMs may be the same person as the TIXC or investigator
- Presume that Respondent is not responsible for sex discrimination
- Establish reasonably prompt timeframes for “major stages” of the process
 - E.g.: Evaluation, Investigation, Determination, Appeal
- Advisors not required

Determining a Basis for Investigation

There are three bases for investigations:

- **Incident:** a specific incident or period
 - May involve one or multiple alleged violations
- **Pattern:** repetitive or similar behaviors or targets chosen by the same Respondent over a period
 - Tend to involve multiple Complainants
- **Climate/Culture:** discriminatory policies, processes, and environments
 - May have no identifiable Respondent
 - May cue up a subsequent incident or pattern investigation based on information gathered during climate/culture investigation

Investigation Scope

- TIXC determines the scope of the investigation
- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
- Considerations:
 - Allegations outside of jurisdiction
 - Individual vs. Group
 - Multiple Complainants or Respondents
 - Counter-complaints
- May need to adjust scope during process

Section 106.45: Basic Requirements Cont.

- Take reasonable steps to protect the privacy of the parties and witnesses
 - Cannot restrict ability of parties to:
 - Obtain and present evidence
 - Consult with family members, confidential resources, or advisors
 - Otherwise prepare for or participate in the Resolution Process
- Require an objective evaluation of relevant (and not otherwise inadmissible) evidence
- Respondent requirements apply **only** to individuals
 - Recipients are **not** Respondents in policy or practice complaints

Section 106.45: Notice of Investigation and Allegations

- Does **not** need to be in writing
- **Must include:**
 - Recipient's grievance procedures, including Informal Resolution
 - Sufficient available information to permit parties to respond to the allegations, such as identities (who), allegations (what), date (when), location (where)
 - Statement that retaliation is prohibited
 - Statement that parties have opportunity to access relevant evidence or description of the evidence

Section 106.45: Investigations

Section 106.45

- Adequate, reliable, and impartial
- Gather evidence
- Permit parties to present fact witnesses; inculpatory and exculpatory evidence
- Recipient reviews all evidence gathered through the investigation and determines relevance
- Provide parties opportunity to access relevant evidence or accurate description of such evidence
- Provide parties reasonable opportunity to respond to evidence
- Investigation report not required
- Take reasonable steps to prevent and address parties' unauthorized disclosure of information and evidence obtained through process

Understanding Evidence

- Duty to collect **relevant** and not impermissible evidence
 - Relevant evidence is information **related to the allegations** of sex discrimination under investigation that may aid in determining whether the alleged misconduct occurred
 - Inculpatory and exculpatory evidence
 - Some evidence may only be relevant to assessing credibility
- Relevant evidence forms the basis of the investigation report



Section 106.45:

Parties' Review and Response

- ATIXA recommends investigators compile relevant evidence into an investigation report
 - Send to each party and Advisor in an electronic format or hard copy
 - Include relevant evidence
- Investigator must:
 - Provide parties a reasonable opportunity to respond to Investigation Report/accurate summary
 - Provide all relevant evidence upon request by a party (if investigator only provides an accurate summary of the evidence)
 - Consider parties' feedback and incorporate where appropriate

Evidence Activity

Deidre

- Deidre, a queer student, alleged that her faculty member has exhibited discriminatory and queerphobic conduct against her
- According to Deidre, her faculty member frequently cuts off Deidre during class but does not do so for other students in the seminar, all of whom Deidre knows, and none of whom identify as queer
- The faculty member also delays responding to Deidre's emails, although other students report prompt responses
- Deidre approached the faculty member during office hours to express her concerns about the faculty member's behavior
- Later, despite strong peer reviews, Deidre received a poor grade on her capstone project
- Deidre believes the grade is retaliation for speaking up

What kinds of evidence may be available in this situation?

What are your next steps?

Dr. Munroe

- Dr. Munroe, a faculty member, reports to the Title IX office that he believes his department is biased against men in its hiring, evaluation, and promotion practices – which in turn impacts compensation
- As evidence, he cites:
 - Recent hiring decisions to hire female faculty members despite the recruiting pool being overwhelmingly male
 - Recent performance concerns mentioned by the department chair, who is female, toward a handful of male faculty members
 - A recent decision by the department chair to pass him over for tenure in favor of a faculty member with fewer years of experience and fewer publications in the field

What additional evidence may be available in this situation?

What are your next steps?

Section 106.45 Decision-making

Section 106.45: Decision-making

- Provide a process enabling DM to question parties and witnesses to assess credibility
 - DMs may be the same person as the TIXC or investigator
- Use preponderance of the evidence standard
 - Unless clear and convincing is used for other “comparable proceedings”
 - “Comparable proceedings”
 - Proceedings for other discrimination complaints involving the same **category of respondents** (students vs. employees)
 - Similar types of “person-to-person offenses” but do not pertain to sex

DM Model: Separate Decision-Maker

ATIXA recommends:

- A separate Decision-maker
 - May meet with parties in individual meetings to ask questions and assess credibility
 - May meet with investigators or witnesses as needed
 - Makes findings and policy violation determinations
 - Determines sanctions and remedies
- Robust appeal opportunity

DM Models: Investigator as Decision-Maker

- One person serves as Investigator and Decision-maker
 - This could be the Title IX Coordinator
- ATIXA does **not** recommend this model, but recognizes institutions may feel as though this is the best option for them
- If institutions decide to use this model, ATIXA recommends institutions offer a robust appeal opportunity
 - Expand upon the three appeal grounds in the regulations
 - Permit substantive appeals of findings and sanctions (for separation-level offenses)

Decision-Making

- Making a Finding
 - Decision-makers determine what occurred based on the standard of evidence
- Making a Final Determination
 - Decision-makers determine whether what occurred is a policy violation applying the standard of evidence
 - Consider each allegation individually for each Respondent
- Written Determination
 - Rationale
 - Appeal procedures (if applicable)
 - TIXC to implement remedies and disciplinary sanctions as appropriate

Decision-making Reminders

Recipients must:

- Notify parties of the outcome of the complaint
 - Overrides FERPA protections
- Refrain from disciplining parties for false statements based solely on the determination
- Provide and implement remedies to restore access and prevent recurrence
 - Not just sanctions

Sanctions and Remedies

Sanctions

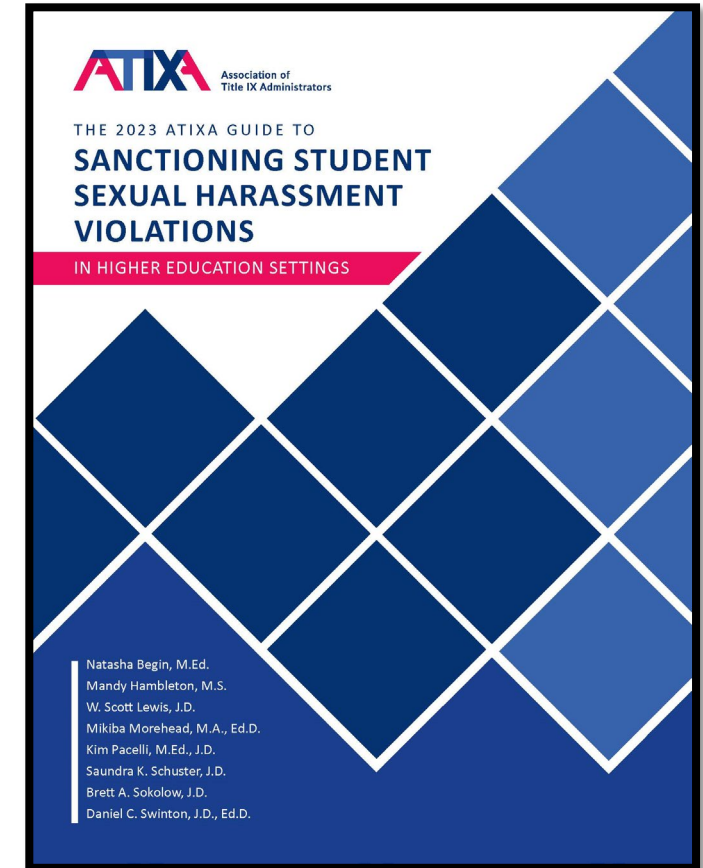
- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- TIXC assures sanction compliance
 - Failure to comply could lead to discipline

Remedies

- May be implemented before or after a determination
- TIXC determines remedies that are equitable and not clearly unreasonable given the circumstances
- Goal: preserve or restore access to education program and activity
- TIXC ensures remedies are implemented

Sanctions

- May consider prior misconduct, precedent, acceptance of responsibility, and collateral or multiple violations
- Sanctioning Pitfalls
 - Failure to stop, prevent, and remedy
 - Conflating the finding, the determination, and the sanction
 - Unwillingness to suspend, expel, or terminate
 - Inconsistent or disparate sanctions for similar behavior
 - Failure to consider aggravating or mitigating circumstances
 - Lockstep or prescribed sanctioning; failing to address incident-specific circumstances



Appeals

Appeals Defined

- Under § 106.45, offer an appeal process mirroring those in **comparable proceedings**:
 - If there is no appeal in comparable proceedings, none is required
 - Institutions may exceed this requirement
 - Comparable proceedings may include those used to resolve other discrimination complaints
- ATIXA recommends permitting only one level of appeal
- ATIXA also recommends using the same grounds for appeal as you do for a § 106.46 process

Appeal Grounds

1

Procedural irregularity that would **change the outcome**

2

New evidence that would **change the outcome** and that was not reasonably available when the determination of whether sex-based harassment occurred

3

TIXC, Investigator, Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would **change the outcome**

Institutions have the discretion to add additional appeal bases, as long as the procedures and additional bases for appeal are equally available to all parties

Appeal Determinations

Determinations may include:

- **Upholding** the original determination and sanctions (if any)
- **Remanding** the complaint back to the DM for reconsideration or to the Investigator for further investigation
- **Modifying** the original determination and/or sanctions (if any)
- **Overturning** the determination (not recommended)

Recordkeeping

Recordkeeping Defined

- Recipient must maintain records for a minimum of **seven** years:
 - Sex discrimination complaints, including records re: informal resolution or grievance procedures and their outcome
 - Notices, reports, or information about conduct that may be sex discrimination
 - All training materials
- Should also document how response was **not** deliberately indifferent





Association of
Title IX Administrators

Questions?

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