



Title IX Investigator Training

August 2, 2023

NJIT

Overview



- Review of 2020 Regulations
- Review of Title IX Investigator Tips (2022 Training)
- Title IX Case Study
 - Review Intake Notes and Notice of Allegations Letter
 - Prepare and Practice Interviewing Complainant
- Trauma-Informed Practices
- Working Lunch – Building Trauma-Informed Questions for Interviews
- Wrap-Up of Trauma Practices
- Interviewing and Note-Taking Skills
 - Prepare Questions for Respondent – 1 or 2 Shares
 - Distribute Questions and Note-Taking Exercise
 - Submit Summary
- Addressing Potential Bias in Interviewing
- Brief Overview of New Regulations
- Final Questions

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."

- Title IX of the Education Amendments of 1972

Enforced by the Office for Civil Rights (OCR)

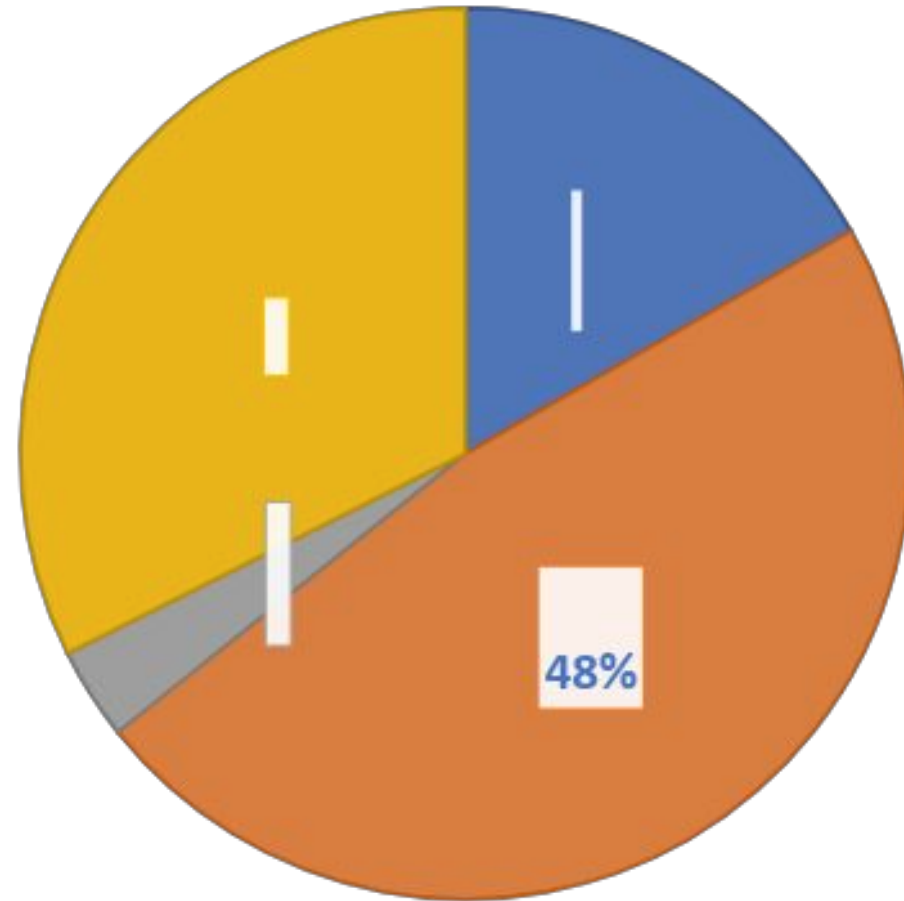


OCR 2022 Report

Total Reports: 18,804



Number of Complaints



Title IX Law & Regulation Timeline



2011

OCR issues Dear Colleague Letter changing how campuses handle Title IX

2017

Department of Ed withdraws guidance and issues Q&As and starts NPRM process

2022

Guidance and new NPRM process announced

2014

OCR issues additional guidance in response to outcry from schools

2020

New regulations issued and effective August 2020 amidst COVID

Title IX Covers



Title IX protects BOTH students and employees of educational institutions

Sex discrimination

Sexual Harassment

Athletics

Sexual Assault

Pregnant Students

Recruitment/Admissions Programs



Legal Obligation

Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.



For Title IX to apply, the behavior must occur in the school’s “education program or activity,” further defined as:

locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

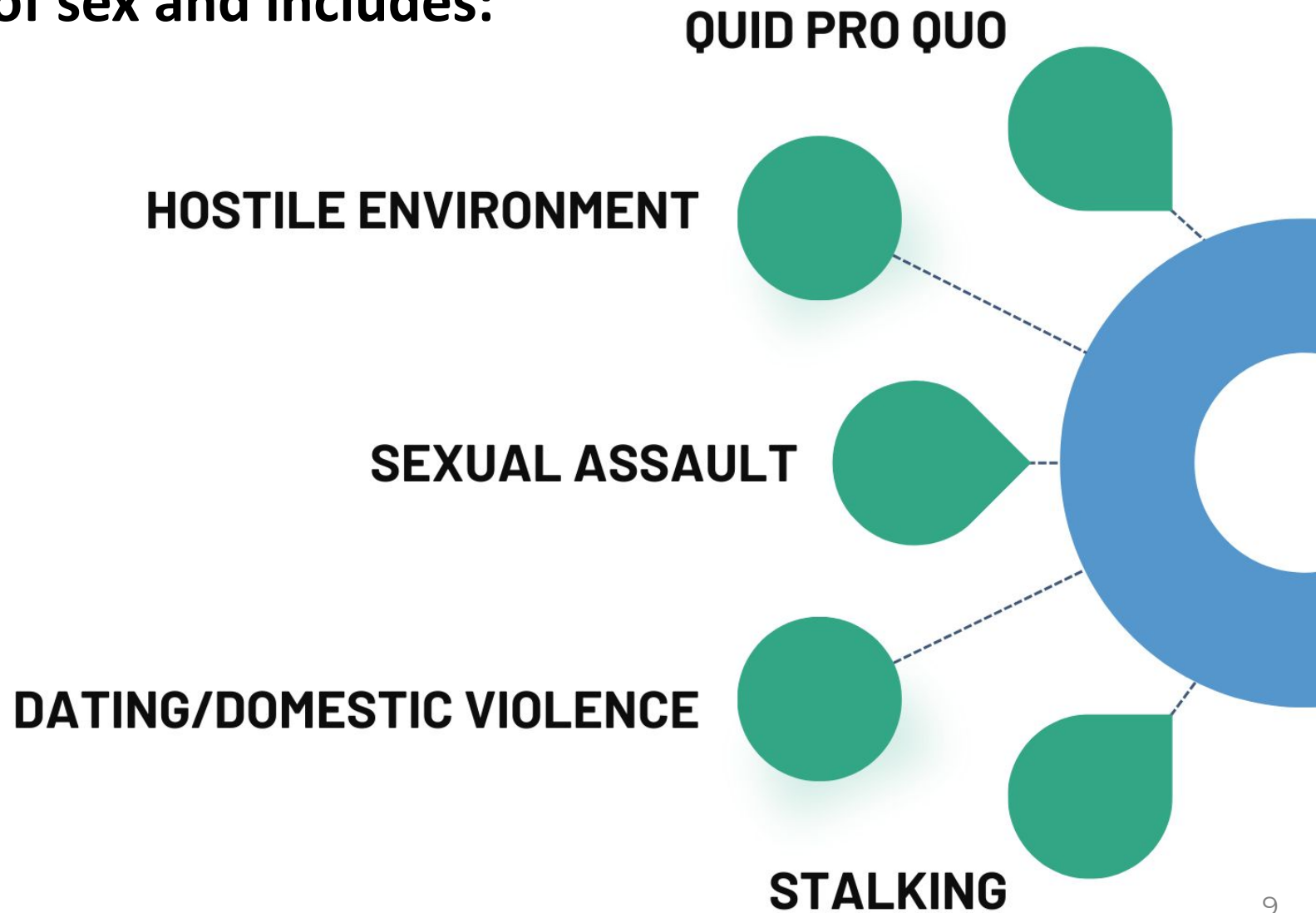
Off-campus activities covered if one (1) of three (3) requirements are met:

1. the off-campus incident occurs as part of the school’s operations;
2. the school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college

Title IX (TIX) Definition of Sexual Harassment



Defined conduct on the basis of sex and includes:





Defines conduct “on the basis of sex” and includes:

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
- Hostile environment - 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 school’s education program or activity;



The definition includes:

- **Sexual Assault** means any sexual act directed against a Complainant without consent. Sexual Assault includes fondling, incest, rape, sexual assault with an object, sodomy, and statutory rape.
- **Dating violence** means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a 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.



- **Domestic violence** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim
 - o It includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior,
 - o By a person who— (A) is a current or former spouse or intimate partner of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - fear for his or her safety or the safety of others; or
 - suffer substantial emotional distress.

Investigator Responsibility



- Serve objectively, impartially, without bias
 - Conflicts
 - Stereotypes
- Gather all information related to a claim
- Analyze
 - Relevancy
 - Authenticity
 - Credibility
- Connect to parties and witnesses
- Assist in maintaining legitimacy of the process
- Policy should define the INVESTIGATOR role



Trauma-Informed Interviews



- Born out of police responses to allegations of sexual assault that often resulted in reporters dropping out of the process
- Police decisions regarding credibility of victim/survivor often faulted manifestations of behavior that was consistent with the response of an individual who experienced trauma
 - Inability to provide a linear recollection of events
 - Inability to recall certain key facts
 - Expectations of a fight response to assault
 - Delays in reporting
 - Engaging in counter-intuitive behavior after the assault
 - Many behaviors were labeled “victim-blaming” by advocacy groups

The Impact of Trauma



- Memory
 - Encapsulating certain memories, losing others
 - Retelling factual events in a non-linear fashion
 - Abilities to recall memories changing over time
- Physical responses
 - Fight
 - Flight
 - Freeze
- Counter-intuitive behavior
 - Delays in reporting
 - Continuing relationships with perpetrator

Trauma-Informed Tips for Interviewing



- Promoting fairness in the process
- Decline to allow bias of trauma-based behaviors and/or conclusions about such behaviors to impact the interview
- Maintain impartiality by treating all parties (and witnesses) in a respectful and non-judgmental manner
- Encourage parties/witnesses to share what they recall and not demanding that they recall each detail
- Seek clarification in balanced manner
 - Using open-ended, non-judgmental questions
- Remain gender-neutral



Question 1 – How would you have changed your interview questions (if at all) knowing that Complainant was in treatment for trauma from relationship with Respondent?

Question 2 – How would you prepare for the interview?

- Preparation time
- Where should interview take place
- Set-up of room
- Expectations of trauma victim
- Questioning out of sequence
- Prompts to spark memories
- What to do when someone gets upset



Identifying and Avoiding Bias in Interview Summaries

Bias Definition



- Bias is a tendency to lean in a certain direction, often to the detriment of an open mind. Those who are biased tend to believe what they want to believe, refusing to take into consideration the opinions of others. To be truly biased, it means you are lacking a neutral viewpoint. Sprouting from cultural contexts, biases tend to take root within an ethnic group, social class, or religion.

Bias – Conscious and Unconscious



- **Conscious**
 - Explicit
 - Stated preference
- **Unconscious**
 - People often unaware of the drivers
 - Developed over a period of time
 - Influenced by many factors
 - Short cuts developed by the brain and play a role in
 - Immediate response
 - Can mimic fear response
- **Affinity**

Practical Tips for Avoiding Bias in Interviews



- Consider your interviewee prior to the interview
- Bring in reinforcements
- Avoid developing an early hypothesis
- Try to disprove your theory



Title IX New Regulations 2023



- Sex-based discrimination and harassment
- Hostile environment
- Explicit coverage for:
 - Sexual orientation
 - Sex characteristics
 - Sex stereotypes
 - Gender identity

Grievance Process



- Single investigator model
- More discretion around jurisdiction and dismissals
- Hearings permitted at post-secondary level

Pregnancy Protections



- Remember: Title IX applies to both staff and students
- Availability of on-site supports
- Accommodations for pregnant and parenting students
- Time off for pregnancy-related matters



Additional Guidance on Athletics Eligibility for Transgender Athletes



Questions?

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