

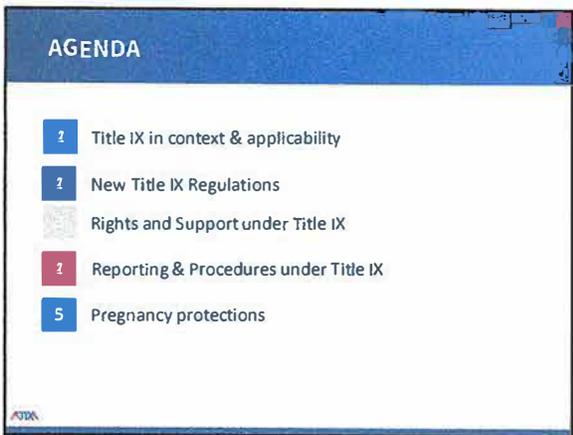
ATIX ASSOCIATION OF TITLE IX ADVISORS

Nov 18, 2020

Title IX: Updates and Processes

Presenter: Daniel C. Swinton, J.D., Ed.D.
President, TNG
Vice President, AIIXA

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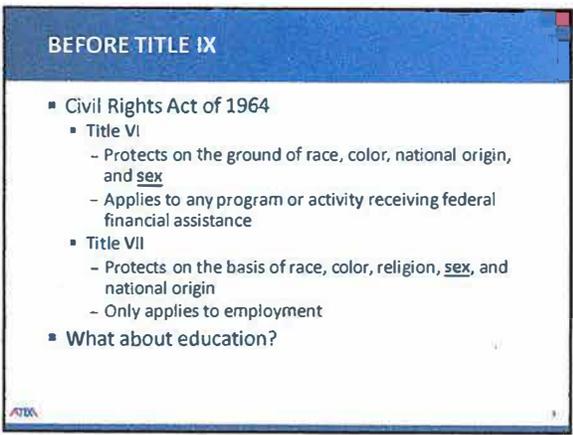


AGENDA

- 1 Title IX in context & applicability
- 1 New Title IX Regulations
- 1 Rights and Support under Title IX
- 2 Reporting & Procedures under Title IX
- 5 Pregnancy protections

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BEFORE TITLE IX

- Civil Rights Act of 1964
 - Title VI
 - Protects on the ground of race, color, national origin, and sex
 - Applies to any program or activity receiving federal financial assistance
 - Title VII
 - Protects on the basis of race, color, religion, sex, and national origin
 - Only applies to employment
- What about education?

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TITLE IX
20 U.S.C. § 1681 & 34 C.F.R. PART 106

"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."

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EQUITY & TITLE IX

EQUALITY **EQUITY** **JUSTICE**

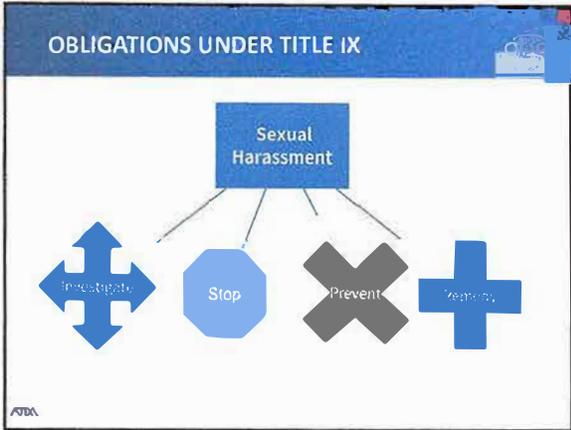
All about Equity, but moving towards Justice.

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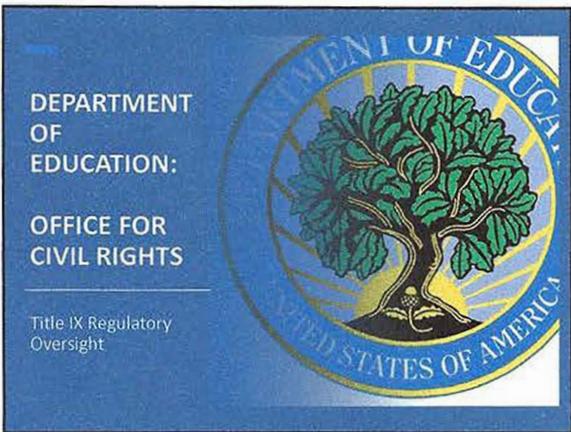
KEY TITLE IX ISSUES

<p>Sex-Based Discrimination</p> <ul style="list-style-type: none"> ▪ Program Equity ▪ Recruitment, Admissions and Access ▪ Pregnancy ▪ Athletics ▪ Employment, Recruitment & Hiring ▪ Extra-curricular activities ▪ Housing 	<ul style="list-style-type: none"> ▪ Access to Course Offerings ▪ Salaries and Benefits ▪ Financial Assistance ▪ Facilities ▪ Funding ▪ Sex, Gender, Gender Identity 	<p>Sexual Harassment</p> <ul style="list-style-type: none"> ▪ Quid Pro Quo ▪ Hostile Environment ▪ Sexual Assault ▪ Domestic Violence ▪ Dating Violence ▪ Stalking <p>Retaliation</p>
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- ### REGULATORY PROGRESSION
- Regulations created in 1975
 - OCR's Regulatory Guidance
 - Significant Guidance in 1997 & 2001
 - "Dear Colleague Letter" (DCL) in 2011
 - Withdrawal of DCL in 2017
 - Sweeping new Regulations implemented in May 2020
 - Amended 1975 Regs.
 - Focus on policy definitions & grievance procedures
- ADA

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2020 REGULATIONS DEFINITIONS

- Sexual Assault
 - Forcible Rape
 - Forcible Sodomy
 - Sexual Assault with and Object
 - Forcible Fondling
 - Incest
 - Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking

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2020 REGULATIONS: DEFINITIONS

- Sexual Harassment
 - 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

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2020 REGULATIONS: REPORTING

- Actual Knowledge = reported to an Official With Authority
 - Mostly Deans, VPS, Associate Deans, & Assistant Deans
 - TIX personnel
- ATIXA recommends ALL employees report all sexual harassment to the TIX Coordinator
 - When in doubt, REPORT
- Reports should be made to the TIX Coordinator
 - Email
 - Phone
 - In-Person

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2020 REGULATIONS: REPORTING

- Upon receipt of a report, the TIX Coordinator will:
 - Contact Complainant
 - Offer supportive measures
 - Take wishes of Complainant into account
 - No longer an automatic investigation
 - Provide information about how to file a "formal complaint"
 - Investigation only occurs when Complainant files formal complaint*
- Formal Investigation vs. Alternative Resolution/ Informal Resolution

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2020 REGULATIONS: INFORMAL RESOLUTION

- Often used for less serious allegations
- Types of Informal Resolution can include approaches such as:
 - Mediation
 - Shuttling
 - Negotiated agreement
 - Restorative practices
- Can be used only if both parties consent
- Can be stopped at any time
- Typically does not result in sanctions

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2020 REGULATIONS: ADMINISTRATIVE RESOLUTION

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Notice of Investigation and Allegation(s) to parties
4. Investigation
5. Draft Report
6. Evidence to Parties for review (10 days to review)
7. Final investigation report & evidence to parties (10 more days to review)
8. Live Hearing
9. Appeal

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2020 REGULATIONS: ADMINISTRATIVE RESOLUTION

- Access to all relevant evidence, investigation report
- Advanced, written notice of allegations
- Complainant participation necessary
- Right to advisors
- Thorough investigation report
- Live Hearing
 - Direct Cross-examination by Advisors

Mutual rights to appeal

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PREGNANCY

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PREGNANCY & TITLE IX

- Title IX protects on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.
 - Pregnancy to be treated as a “temporary disability”
 - Reasonable accommodation rubric
 - Medical documentation that student can physically or emotionally participate – Only permitted if ALL students are required to provide documentation or notes for any physical or emotional condition requiring the attention of a physician.

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PREGNANCY & TITLE IX

- Cannot be required to complete alternative course of study
- Students on pregnancy-related leave must be reinstated to the status they held with the leave began
 - Make-up work – Offer options; allow the student to choose how to do so.
- Determination of whether leave or other absence is necessary is up to the pregnant student's personal health care provider.

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Questions?

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