



University of DC
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Title IX Training

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PRESENTER



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A Brief History of Title IX

Pre-1972

- **Title VI of the Civil Rights Act of 1964**
 - *No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.*

- **Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e-3(a))**
 - *“Prohibits discrimination in the terms, conditions or privileges of employment on the basis of an employee’s sex, race, color, national origin or religion.”*

- **1965 - Executive Order 11246**
 - Prohibited federal contractors from discriminating on basis of race, color, religion, national origin. “Sex” was added in 1968; renamed Exec. Order 11375.

A Brief History of Title IX 1972-Present

- Department of Health, Education and Welfare (HEW) – Title IX regulations codified in 1975.
 - “Title IX and Intercollegiate Athletics” (1979).
- 1979 – Supreme Court created a private right of action under Title IX, *Cannon v. U. of Chicago*, 441 U.S. 677 (1979).
- 1980 – U.S. Department of Education was created.
 - Title IX oversight transferred to Dept. of Ed.’s Office for Civil Rights (OCR).
- Supreme Court holds “Employment discrimination comes within Title IX’s prohibition,” *North Haven Bd. of Education v. Bell*, 452 U.S. 512 (1982).

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 educational program or activity receiving federal financial assistance.

Title IX of the Education Amendments of 1972
Implementing Regulations at:
20 U.S.C. § 1681 & 34 C.F.R. Part 106

IX

When does Title IX apply?

Covered Individuals

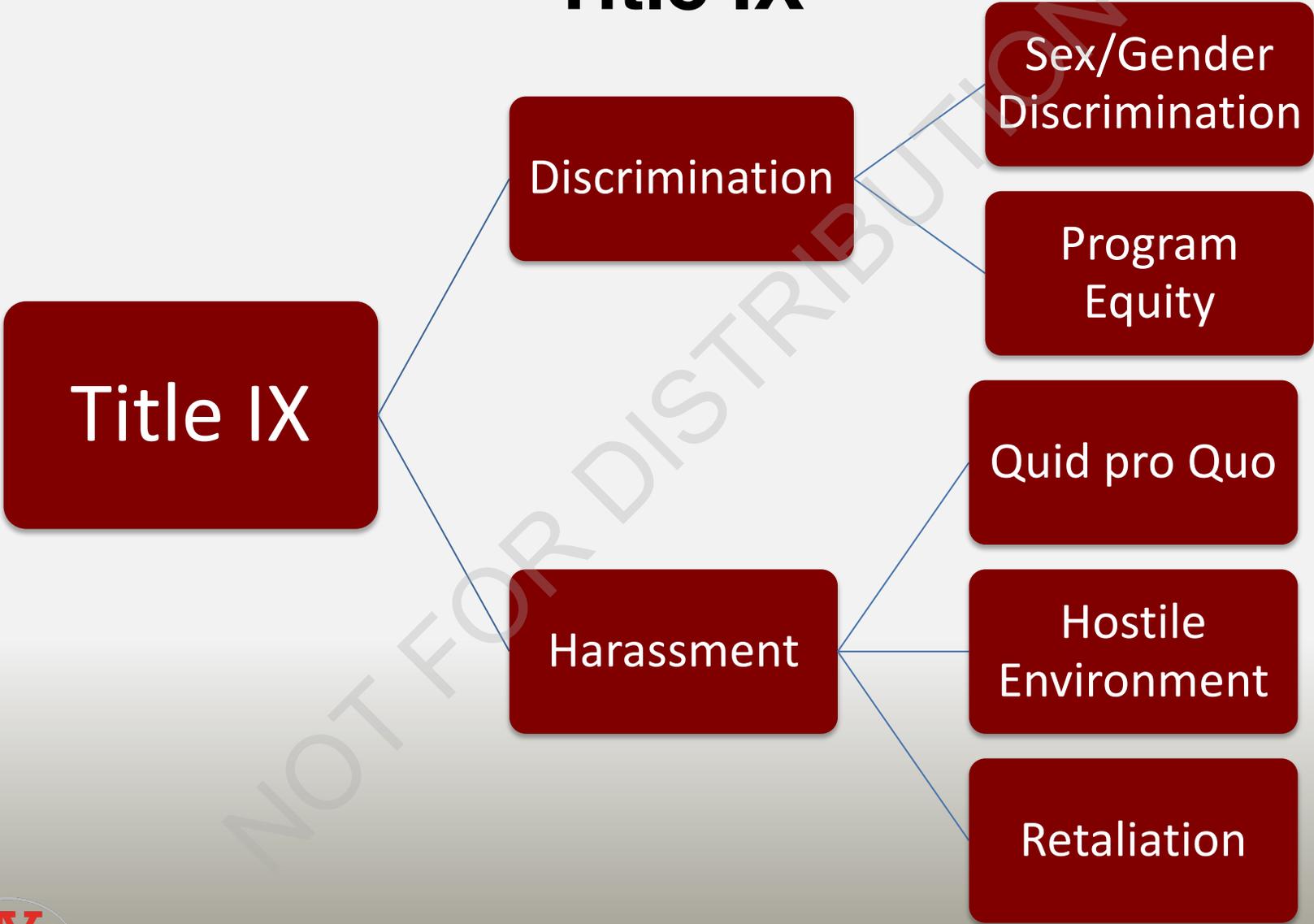
- Students
- Faculty
- Staff
- Campers
- Subcontractors, vendors
- Guests/visitors

(as either reporting or responding party)

Title IX Overview

- Sex Discrimination
- Sexual Harassment
- Sexual Violence
 - Non-consensual Sexual Intercourse
 - Non-consensual Sexual Contact
 - Interpersonal/Relationship Violence
 - Stalking
- Retaliation
- Other violations when on basis of sex
 - E.g.: Bullying, Hazing, Voyeurism, Threats & Intimidation, Retaliatory Harassment
- Quid Pro Quo Sexual Harassment
- Pregnancy
- Program Equity
 - Academics
 - Athletics (3-part test)

Title IX



Understanding the Three Forms of Sexual Harassment

Sexual Harassment is:

Unwelcome conduct of a sexual nature or that is sex or gender-based

Based on power differentials (**quid pro quo**),

The creation of a **hostile environment**, or

Retaliation

Title IX Essential Compliance Elements

- Once a “responsible employee” has either actual or constructive notice of sexual harassment/sexual misconduct, the school must:
 - Take immediate and appropriate steps to **investigate** what occurred.
 - The obligation to investigate is absolute, even if just a preliminary inquiry (see *Davis*).
 - Take prompt and effective action to:
 - **Stop** the harassment;
 - **Remedy** the effects; and
 - **Prevent** the recurrence.

NOTE: This is regardless of whether or not the victim makes a complaint or asks the school to take action.

Institutional Obligations Under Title IX



When does Title IX apply?

Jurisdiction

- The *Davis* standard is that jurisdiction is expected when the institution has:
 - Control over the harasser (discriminator); **AND**
 - Control over the context of the harassment (discrimination).

- For Sexual Misconduct/Title IX Cases.
 - There is an expectation that you have *SOME* jurisdiction over off campus incidents.

- Jurisdictional Limitations.
 - Geographic.
 - Temporal.

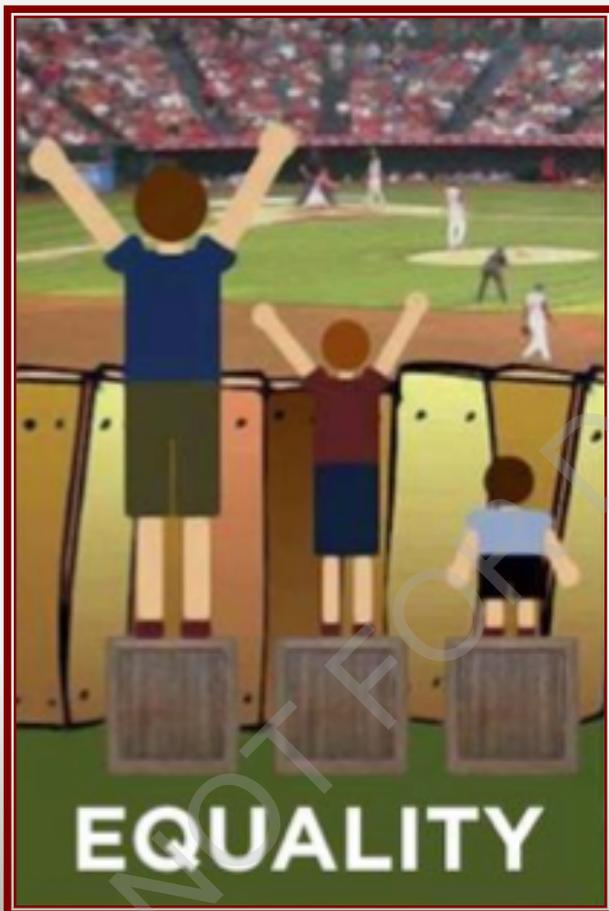
When does Title IX apply?

Subject Matter

➤ Limitations:

- Actions/conduct/speech protected by academic freedom.
 - Pedagogically appropriate and germane to the subject matter of course that instructor hired to teach/research.
- Actions/conduct/speech protected by the First Amendment.
 - Merely offensive conduct cannot be disciplined at a public (or CA) university.
 - Must be severe, pervasive (persistent), and objectively offensive.
 - Must still remedy for conduct that is severe or pervasive (OCR).
 - Subjectively offensive conduct cannot be disciplined at a public (or CA) university unless it is also objectively offensive.

Equality v. Equity



TITLE IX: FOUNDATIONAL CASES

- *Franklin v. Gwinnett Public Schools*
- *Gebser v. Lago Vista*
- *Davis v. Monroe County Bd. of Education*

Franklin v. Gwinnett Public Schools

503 U.S. 60 (1992)

- Christine Franklin alleged that during her junior year (1986), an economics teacher, Andrew Hill, engaged her in sexually explicit conversations, forced kissing, and coercive sexual intercourse on school grounds.
- District and Circuit Court of Appeals dismissed the case, finding Title IX does not allow for award of monetary damages.
- U.S. Supreme Court decided that sexual harassment constituted sex discrimination under Title IX.
- Gwinnett also provided a private right for recovery of monetary damages under Title IX.
- Gwinnett did not address issues concerning the educational institution's liability.

Gebser v. Lago Vista Indep. School

U.S. Supreme Ct. (June 22, 1998)

- Case involved faculty/student sexual harassment.
- Supreme Court created high standard that students must meet to prevail on a sexual harassment claim against institutions when an employee/student consensual relationship is basis of claim.
- Court said you cannot recover monetary damages against the school unless the behavior has been reported to someone with power to alter the situation (“actual notice”) and “deliberate indifference” has been demonstrated by the school.

Gebser v. Lago Vista Indep. School

524 U.S. 274 (1998)

➤ Three-part standard:

1. An official of the educational institution must have had **“actual notice”** of harassment;
2. The official must have authority to **“institute corrective measures”** to resolve the harassment problem; **AND**
3. The official must have **“failed to adequately respond”** to the harassment and, in failing to respond, must have acted with **“deliberate indifference.”**

Davis v. Monroe County Bd. of Ed.

526 U.S. 629 (1999)

- Prolonged pattern of student/student sexual harassment of a fifth-grade girl by a classmate.
- Parents complained to three teachers and principal.
- The school took no action until the boy was charged with, and pled guilty to, sexual battery.
- Filed Title IX action, alleging that persistent harassment and deliberate indifference resulted in her inability to attend school and participate in activities.

Davis v. Monroe County Bd. of Ed.

526 U.S. 629 (1999)

- The institution must have “**actual notice**” of the harassment; and it must have responded to the harassment with “**deliberate indifference.**”
 - *deliberate indifference constitutes a response that is “clearly unreasonable in light of the known circumstances.”*
- Harassment must be “**severe, pervasive, and objectively offensive,**” and the indifference “**systemic.**”
- Jurisdiction under Title IX
 - Control over the harasser; AND
 - Control over the context of the harassment.

Civil Law Suits v. Administrative Action & Title IX

Lawsuit

- File in federal court.
- Monetary damages, injunction.
- Requires:
 - Actual notice.
 - Employee with authority to take action.
 - Deliberate Indifference.

Administrative Action

- Initiated by OCR.
- Voluntary compliance or findings
- Requires:
 - Actual OR constructive notice (“knew or should have known”).
 - Investigate.
 - End harassment.
 - Remedy impact.
 - Prevent recurrence.

OCR & TITLE IX



- OCR's role
- Regional offices
- Enforcement mechanisms
- OCR complaints
- Investigation process
- OCR process alternatives
- Remedies under Title IX
- Civil lawsuits v. administrative actions

TITLE IX UPDATES: OCR GUIDANCE

- **2001 Revised Sexual Harassment Guidance**
- ~~2011 Dear Colleague Letter WITHDRAWN~~
- ~~2014 Q&A on Title IX and Sexual Violence WITHDRAWN~~
- **2015 Dear Colleague Letter, Resource Guide, and Dear Coordinator Letter**
- ~~2017 Dear Colleague Letter on Transgender Students WITHDRAWN~~

TRAINING FOR MANDATED REPORTERS

- Understand who is a Mandated reporter under Title IX.
- Recognize the reporting requirements under Clery/VAWA, Title VII and child abuse.
- Know how, to whom and when to report alleged Title IX violations.
- Understand the basic flow of information and the process once a Title IX report is made.



CASE STUDY: MARIA & CHRIS



CASE STUDY: MARIA & CHRIS

- Two months after an academic conference, a Deputy Coordinator is approached by an undergraduate biochemistry student, Maria, who says that Chris, a doctoral student who oversees her biochemistry lab, was excessively intoxicated on multiple occasions at the conference and was “creepy” and “touchy-feely” with several other female attendees at the conference.

CASE STUDY: MARIA & CHRIS

- Maria said that one night at the hotel bar in front of a number of other UDC students, Chris, placed his hands on her hips, pulled her close against him and said, “I am so turned on by you right now. What will it take for me to get you back to my room?” He then moved his hands down cupped her buttocks in both hands and pulled her into him; Maria said she could feel his erect penis push against her. He then looked at her, smiled said, “see, told you,” while giving a small thrust.

CASE STUDY: MARIA & CHRIS

- Maria said she was mortified at Chris' behavior (both because he is one of her mentors and because he is married) and tells you that if she were out at a bar downtown and another man did that to her she “would have kneed him in the balls and slapped him in the face”. Not knowing what to do, she got the bartender's attention and ordered a drink, after which Chris let her go.

CASE STUDY: MARIA & CHRIS

- Maria said that she was paralyzed by the incident and felt unable to address Chris' behavior because she asked him to write a letter of recommendation for her and the professor told the class Chris is like a son to him. She hopes to attend graduate school at Marshall and "she did not want to ruin her career before it even starts."
- Maria said she was approached by two other women who witnessed the incident and relayed incidents where Chris had touched them in a way that also made them uncomfortable. One of the women is from the same program as Maria, but the other is from a different institution.

CASE STUDY: MARIA & CHRIS

- When Maria returned from the conference, Chris seemed more distant and she received a bad grade (C-) on her last lab assignment, even though she felt her work was on-par with her other A-level work. There was a note at the bottom of her assignment from Chris saying, “let’s talk about how you can improve your grade...” Maria did not feel comfortable meeting with him, so she just let it go at the time.
- Last week, Chris sent Maria nude pictures of himself with an erection along with text stating, “See what you are missing?”

CASE STUDY: MARIA & CHRIS

- Still, she tells the Deputy Coordinator that she remains uncertain if she wants an investigation to ensue, citing concerns about retaliation and the power Chris holds over her career and his support within the department.
- Maria says she is finding it difficult to study, attend her lab and is having trouble focusing on anything. She says she does not feel safe on campus.
- Maria has since heard from other students in her program and within the same school that Chris has a reputation as a “womanizer” and that even though the department knows about Chris’ problematic behavior, they have never addressed it.

Case Study Part 1: Maria's Advisor

- The Coordinator meets with Maria learns that Maria:
 - Does not feel safe on campus and she is having anxiety attacks
 - Has begun self-injurious behavior over the last week (cutting)
 - Was sexually abused as a child
 - Wants Chris removed immediately as the lab supervisor, but is worried about the effect that would have on her future.
 - Does not want to ruin Chris' life
 - Is very confused by how the formal resolution process works
 - Does not want to tell her parents about the situation

CASE STUDY: MARIA & CHRIS

- The Coordinator provides Chris written notification of the allegations and he writes an email back indicating:
 - The system is rigged against him and he is hiring a lawyer
 - He alleges Maria sent him a text the previous week a picture of her in her bra and panties with text from Rihanna’s “Birthday Cake” song,
 - “I know you wanna bite this. It's so enticing. Nothing else like this. I'mma make you my bitch.”
 - He tells you he did come on to her at the bar, and she kissed his neck, then pushed him away playfully saying “you can’t handle this.”

CASE STUDY: MARIA & CHRIS

- Chris (cont.)
 - Chris He says he gave her the grades she earned.
 - He says he and Maria hooked up at the conference.
 - He says she is mad because he hooked up with Maria's friend.
- Later that day the Coordinator returns to her office and Chris' lawyer left her a message asking the Coordinator to call her.
- She also has a message from Maria's advocate who asks why Chris is still on-campus.

THE LAW - MANDATED REPORTING

- Three federal laws create reporting responsibilities for campus employees, faculty and professional staff to:
 - Assure appropriate services to victims of sexual violence
 - Foster transparency about campus crimes, and
 - Permit the institution to appropriately remedy discrimination and harassment.

THE LAW - MANDATED REPORTING

Title IX

- Title IX of the Education Amendments of 1972

The Clery Act

- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990)

Title VII

- Title VII of the Civil Rights Acts of 1964

- Each law imposes differing responsibilities on different employees, creating a confusing and inconsistent set of overlapping standards and expectations.

Title IX: Responsible Employee

- A **responsible** employee includes any employee who:
 - Has the authority to take action to redress the harassment;
 - Has the duty to report harassment or other types of misconduct to appropriate officials; or
 - Someone a student could reasonably believe has this authority or responsibility;



Institutions must ensure that employees are trained regarding their obligation to report harassment to appropriate administrators.

Title IX: Responsible Employee & Notice

- “Ringing the Bell”
- Knew = Actual Notice
 - Witnessed, Reported to them, Victim files a Complaint, Indirect notice (new story, online posting, etc.)
- Should have known = Constructive Notice
 - Widespread, Openly Visible, Well-known to students or others (e.g.: Ohio State Band situation)

The Clery Act: Campus Security Authority

- Jeanne Clery Disclosure of Campus Safety Policy and Campus Crime Statistics Act (1990) identifies a CSA as:
 - Campus Police
 - Non-police security staff responsible for monitoring campus property
 - Individuals and offices designated by the campus security policies as those to whom crimes should be reported
 - Officials of the institution with significant responsibility for student and campus activities

The Clery Act: Timely Warning

- In order to keep the campus community informed about safety and security issues on an ongoing basis, an institution must alert the campus community of certain crimes in a manner that is timely and will aid in the prevention of similar crimes. These are crimes that are:
 - Reported to campus security authorities or local police agencies; and
 - Are considered by the institution to represent a serious or continuing threat to students and employees.

The Clery Act: Emergency Notification

- Triggered by a broad range of potential threats.
 - Any significant emergency or dangerous situation.
 - Involving an immediate threat to the health or safety of students or employees on the campus.
 - Issued without delay once designated campus Clery authorities have confirmed the emergency.

- Includes both Clery and non-Clery incidents.
 - Clery-based example: campus shooting.
 - Non-Clery-based examples: outbreak of communicable disease or impending weather emergency.

Title VII: Supervisors & Managers

- Title VII of the Civil Rights Acts of 1964
 - Mandated to report harassment or misconduct of which they are aware
 - Covers discrimination in the workplace on the basis of:
 - Race
 - Color
 - Religion
 - **Sex**
 - National origin.

Additional Reporting Requirements

- Reporting Abuse or Suspected Abuse of Minors
 - All employees are required to report abuse or suspected abuse of minors consistent with the law of the state. This generally includes reporting immediately to law enforcement and to the state's child welfare agency
- Additional State Reporting

POLICY - THE DUTY TO REPORT ACTS OF SEX/GENDER DISCRIMINATION AND SEXUAL VIOLENCE

- All faculty, employees and professional staff are expected to report acts of sex and/or gender discrimination -- including sexual violence -- involving any member(s) of the campus community, guests or visitors to the Title IX Coordinator, without delay.

Rape &
Attempted Rape

Sexual Assault

Intimate Partner
Violence &
Relationship
Violence

Stalking on the basis
of sex

Sexual Harassment

Gender-based hazing
and bullying

Who is “Confidential”

➤ Confidential/Privileged Employees*

- Licensed professional counselors.
- Pastoral counselors.
- Licensed medical professionals (Health Service Employees).

➤ May Be Deemed Confidential**

- Student health staff (support staff).
- Counseling center staff (support staff).
- Victims advocate/sexual assault-related services and resource centers & staff.
- Others?

* To be confidential, these individuals must be acting in the capacity for which they are employed, acting within the scope of their license, and receive the disclosure during the scope of that employment.

** OCR indicates these should still report aggregate, non-identifiable data for Clery and Title IX purposes.

Who is Not “Confidential”

- Faculty – all levels.
- Faculty advisors.
- Student organization advisors.
- Mediators & ombuds.
- Resident advisors.
- Student affairs staff.
- Academic affairs.
- Residence life staff.
- Campus police/public safety.
- Intercollegiate athletics staff.
- Everyone else...

FERPA & Title IX

- To whom does FERPA apply?
- “Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told”
- “Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a party bringing an allegation’s rights and privacy.”
- All employees receiving reports of a potential violation of University/College policy are expected to promptly contact the Title IX/Equity/AA Coordinator, within 24 hours of becoming aware of a report or incident.

Confidentiality

- If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with [on-campus licensed professional counselors, campus health service providers, Equity Resolution Panel advocates], off-campus local rape crisis counselors, domestic violence resources, local or state assistance agencies, [or on or off-campus members of the clergy/chaplains] who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor.

Confidentiality

- Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

REPORTING RESPONSIBILITIES

Mandated Reporters: Full Reporting	“Confidential” Reporting
Must report all known information regarding an incident to the Title IX Coordinator without delay	Report only non-identifiable, aggregate information regarding incidents disclosed to them
All employees except those who are confidential	Only professional Counselors and Medical Providers

GUIDING VICTIM REPORTING

Victim wants:

Confidentiality	Full Report to Title IX Coordinator	Full Report to Law Enforcement
<p>Should seek out counselors or medical providers</p> <p>May also seek confidential resources from off-campus</p>	<p>Any employee should assist the victim with this request;</p> <p>Title IX Coordinator will ensure that Safety & Security notified to extent mandated by law</p>	<p>Any employee should assist the victim with this request;</p> <p>Safety & Security will then also notify the Title IX Coordinator</p>

Training For Responsible Employees

- Ensure those with authority to address harassment know how to respond appropriately.
- Ensure other responsible employees know that they are obligated to report harassment to appropriate officials.
 - Essential topics for training:
 - Knowledge of institutional and community resources.
 - Information regarding reporting.
 - Who to report to.
 - What to report.

Reluctance to Report

- If a reporting party requests that his or her name not be used:
 - The institution should take all reasonable steps to respond and investigate consistent with that request,
 - So long as doing so does not prevent the school from responding effectively and preventing the harassment of other students or the reporting party.
- **PPTV** – Pattern, Predation, Threat, Violence.

What Happens Next?

- Report made
- VPSA will notify the responding party, the Dean of their college, others as needed
- Judicial Hearing Resolution
 - Investigation
 - Judicial Hearing Officer → Resolution
 - Judicial Hearing Committee → Resolution
 - JHO, faculty representative, student representative
- Appeal

Case Study

On April 27th, Amy Craft, a part-time student at the University of DC and full-time employee, knocks on her academic advisor's (Julia's) door. Julia opens the door and can immediately see that Amy is very upset and looks exhausted. Julia asks if everything is ok and Amy asks if she can close the door. Julia gets up, closes the door, sits back down and Amy blurts out, I think I was raped last weekend in my apartment by another student, a friend of a friend named Todd. Stunned and very concerned, Julia asks what happened. Amy shares the following:

Case Study

On Friday, April, 23rd I went to an on-campus party. I was doing a lot of drinking and dancing and getting to know people. I had at least four drinks in the first few hours I was there. Then, I met Todd. I remember that he came up to me on the dance floor, and started to dance with me. He was really good looking, and so was the other guy he was with, Jeff, whom I had met at a different party the week before.

Case Study

We danced and had a lot of fun, and I remember drinking some more and Todd getting me some Jell-O shots, which were really strong and nasty. I wasn't feeling well and went into the bathroom, feeling like I might throw up. The bathroom was really crowded, and I went outside for some fresh air instead. I sat on the stoop, feeling nauseated. I went over to the bushes and got sick. Todd came over and helped me out. I remember walking home with him, and throwing up some more in my bathroom, but nothing else.

Case Study

When I woke up the next day, his name and number were scrawled on a pad by my sofa, and there was a used condom in the toilet. I got scared, and called him to find out what had happened. I remembered most of what he said about the party, but when he told me that we came back to my room and had sex, I started to cry. I didn't remember any of it, and was afraid I might be pregnant. Todd assured me he wore a condom, and asked me out again. I hung up and cried. I told everything to my roommate Sarah, who was sitting on the sofa when I called Todd. She suggested I talk with you. Please don't tell anyone...

CURRENT TITLE IX LEGAL LANDSCAPE



- What's Next?
- Negligence
- Doe v. Brandeis
- Doe v. GWU

Current state of Title IX litigation

- Increase in lawsuits by the accused.
- Negligence-based claims.
- Due process-based claims.
- Breach of contract.
- Shifting view of what constitutes “notice.”
- Title IX increasingly viewed as a viable cause of action.
- Impact of VAWA 2013 – Section 304.
- Shifting OCR guidance

Negligence and Title IX litigation

- Sub-standard policies and procedures
 - Falling below the “standard of care”
 - Failure to follow common practices in the field (informed greatly by OCR)
- Failure to substantially or materially follow institution’s procedures
- Sub-standard application of policies and procedures
 - Insufficient investigation; not thorough
 - Bias during the resolution process
 - Lack of training
 - Selection of panelists, investigators, appellate officers, etc.
 - Failure to provide rationale

John Doe v. Brandeis University

U.S. Dist. Ct., Mass. (March 31, 2016)

➤ Facts

- John Doe and J.C. met at new student orientation in Fall 2011. J.C. was openly gay, though John Doe was “unsure of his sexual orientation and had never engaged in sexual activity with another man” (p.13).
- They became close friends and began a 21-month “intimate, sexually active, and...exclusive dating relationship” (p. 14). After their relationship ended, they maintained a friendship for four months, but their friendship deteriorated.
- Both John and J.C. were attracted to the same person, who rejected J.C.’s friend request.
- The next day (6 months after relationship ended), J.C. filed a two sentence complaint: “Starting in the month of September 2011, the Alleged Violator of Policy [John] had numerous inappropriate, nonconsensual sexual interactions with me.”

John Doe v. Brandeis University

U.S. Dist. Ct., Mass. (March 31, 2016)

➤ Facts

- Upon receipt of this complaint, and without any additional information, Brandeis' Dean of Students immediately removed John from the residence halls, classes, his campus job and his student leadership position.
- Two days later, John was charged with six potential violations:
 - Sexual misconduct
 - Taking sexual advantage of incapacitation
 - Lack of consent to sexual activity
 - Sexual harassment
 - Causing physical harm to another
 - Invasion of privacy

John Doe v. Brandeis University

U.S. Dist. Ct., Mass. (March 31, 2016)

- The Special Examiner report detailed 12 separate incidents/behaviors and found John Doe responsible for four of them:
 - Touching J.C.'s groin while they watched a movie (they had sex for the first time the next night)
 - Looking at J.C.'s privates when they showered together.
 - Kissing J.C. to wake him up (something he did over the course of their relationship; S.E. rigidly determined J.C. was incapacitated and could not consent)
 - An incident where John allegedly attempted to perform oral sex on J.C. when he didn't want it.

- The S.E. relied heavily on the fact that John's answers to questions were inconsistent; however, the questions were rarely specific enough to allow John to even know what he was supposed to address in his response.

John Doe v. Brandeis University,

No. 15-11557 (D. Mass., 03/21/2016)

- The court wrote a blistering and chastising decision, listing the numerous failures to provide a fundamentally fair process.
- The court listed an array of issues of procedural fairness:
 - No right to counsel
 - No right to confront accuser or cross-examine witnesses
 - No right to examine evidence or witness statements
 - Impairment of the right to call witnesses and present evidence
 - No access to Special Examiner's report
 - No separation of investigatory, prosecution and adjudication functions
 - No right to effective appeal
 - Burden of proof

John Doe v. Brandeis University

U.S. Dist. Ct., Mass. (March 31, 2016)

➤ **Key Takeaways**

- Provide a responding party with detailed allegations and allow them to respond to each of the allegations prior to rendering a finding.
 - “At a minimum, the failure to provide John with notice of the specific charges against him may have substantially impaired the fairness of the proceeding” (p.65).
- Stop hiding the ball – let the parties review reports
- Ensure appellate procedures allow a party to appeal on the basis that the decision “was not supported by the evidence, unfair, unwise or simply wrong” (p.70). (Note: These are all technically procedural errors).
- It is not always enough to follow your procedures if those procedures are deficient in providing basic due process or fundamental fairness protections.
 - “Brandeis appears to have substantially impaired, if not eliminated an accused student’s rights to a fair and impartial process.” (p.12).

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- Fall 2012: “John Doe” was a first-year student at GMU and began a romantic and sexual BDSM relationship with “Jane Roe,” a student at another university.
- On Oct. 27, 2013, Jane alleged that she and Doe had a sexual encounter in Doe’s residence hall room, where:
 - Jane pushed Doe away, but he continued the sexual activity.
 - Doe asked later if she wanted to continue sexual activity and Jane and said, “I don't know.”
 - Doe continued with the sexual activity because Doe never used the agreed upon safe word (“Red”).

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- Jane ended the relationship in January 2014.
- In March 2014, Doe sent Jane a text message that he would “shoot himself” if she did not contact him by the following day.
- In April 2014, Jane reported incidents of harassment and abusive behavior to her university.
- In May 2014, Jane reported to GMU police, who reported the incident to GMU student affairs.

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- Doe had been on the “Campus Assessment and Intervention Team” radar since 2012.
 - In Dec. 2012, he carved “Kill them” into his knuckles with a pocket knife. GMU intervened; Doe told a GMU official that they may have prevented another Virginia Tech.
 - Over the next few years, Doe was disciplined by GMU for, among other things:
 - 1) possession of a knife and a “blackjack” — a lead-filled blunt-force trauma instrument (April 2013); and
 - 2) classroom disruption; A no-contact order with professor was put in place (may 2013).

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- Following the report to GMU, GMU Asst. Dean has frequent contact with Jane over the summer regarding the report.
- In August, GMU Asst. Dean sent an email to Doe, indicating that he was accused of four violations of GMU's sexual misconduct policy.
- On Sept. 5, a hearing was held before a specially trained panel of three faculty and staff.
- On Sept. 12, 2014, the panel found Doe "not responsible" for each of the four alleged violations.
- On Sept. 19, 2014, Jane filed an appeal on the basis of "procedural irregularities" with the hearing.

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- The deciding official for the appeal was the Asst. Dean who had frequent contact with Jane and who initially notified Doe of the accusations against him.
- Prior to rendering a decision on appeal, the Asst. Dean met with Jane and never told Doe about the meeting or informed him of what was discussed.
- Asst. Dean met with Doe as well, but after the Asst. Dean admitted he had already made up his mind.

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- On appeal, the Asst. Dean reversed the hearing panel's decision and found Doe responsible for:
 - (i) penetration of another person without consent, and
 - (ii) communication that may cause injury, distress, or emotional and physical discomfort.
- The Asst. Dean provided no rationale for the decision.
- Doe appealed to the Dean of Students.
- DOS affirmed the decision, only stating that the sanctions were consistent with past practice.

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- Doe sued GMU, who filed a motion to dismiss all four allegations made by Doe.
 - 14th Amendment right to due process.
 - Free speech.
 - Disparate impact (Title IX) and (dismissed).
 - Intentional discrimination (dismissed).
- The district court then addressed cross-motions for summary judgment on the two claims remaining following motion to dismiss.

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

- GMU violated Doe's due process by:
 - Failing to provide **notice** of all allegations used to make a decision.
 - **Deviating substantially** from its appellate procedures by having off-the-record meetings with Jane.
 - **Re-hearing the case on appeal** without providing Doe adequate opportunity to “mount an effective defense.”
 - **Failing to provide a detailed rationale** for the appellate decisions.
 - **Pre-determining the outcome.**
 - Creating a significant **conflict of interest**.
 - Citing the Asst. Dean/Appellate officer's repeated contact with Jane prior to and while considering the appeal

John Doe v. George Mason University

No. 1:15-cv-00209 (E.D. Va. 2016)

➤ The judge also found that GMU abridged free speech.

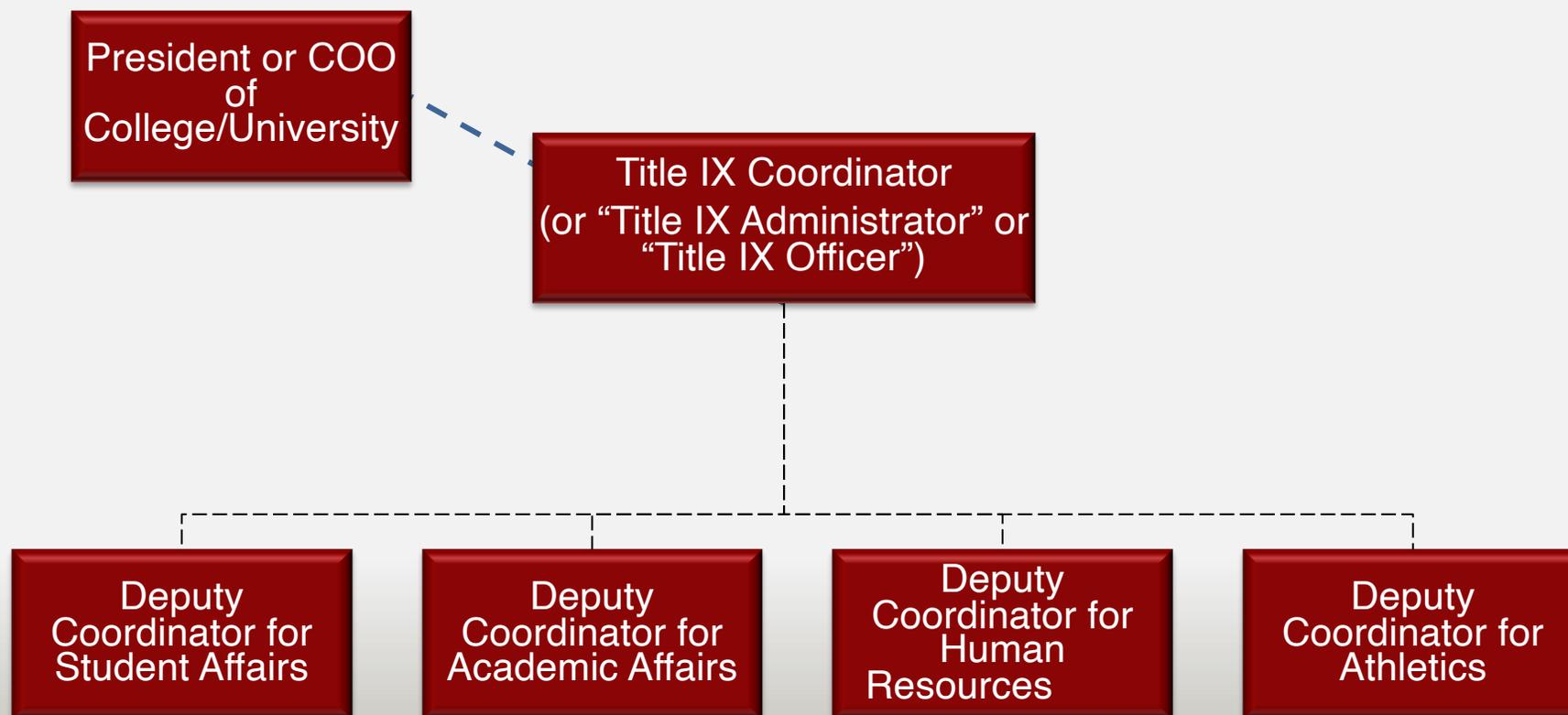
– **Overbroad policy construction:**

- GMU’s policy prohibited “communicating...by electronic communication in a manner likely to cause injury, distress, or emotional or physical discomfort” (p.32).
- The mission of the university to educate and develop requires that students be exposed to comments, ideas, and situations that create “discomfort.”

COMMUNICATION PROTOCOLS FOR TITLE IX CASES & TITLE IX STRUCTURE

- Articulate areas for improvement in current institutional Title IX communication protocols.
- Describe the institution's current Title IX administration structure.
- Explain to the current Title IX administration structure could be improved.
- Understand the role of FERPA and Title IX cases and the differences between privacy and confidentiality.
- Know who should be involved on-campus in various Title IX cases.

Sample Title IX Core Team Structure



Title IX Core Team Structure: Additional Issues

- Job responsibilities of deputy coordinators?
 - Tailor scope and roles based on campus culture.
 - Delegation.

- Multiple campuses:
 - Extension campuses.
 - Online communities.
 - Graduate and professional programs

- Investigator oversight
- Resolution procedures: centralized or not?

Title IX Communication Protocols

- Reporting and lines of communication
- Student Affairs
- Human Resources
- Academic Affairs
- Campus Police/Office or Public Safety and Emergency Management
- Local Law Enforcement - MOU
- Clery Timely Warnings/Emergency Notifications
- Accommodations/Remedies
- Degree programs/Colleges/Schools

Title IX Extended Team

- Include key constituencies not represented on core team.
 - E.g.: General counsel, residence life, Greek life, public safety, etc.
- Regular meetings and coordination.
- Training and programming.
- Interaction with BIT.

Title IX Team Discussion Questions

- What does your core team look like?
 - Structure.
 - Roles and functions.
- What does your extended team look like (if applicable)?
- What is working?
- What is not working?
- What would improve your team/s and its/their functioning?

TITLE IX & BIT INTERSECTIONS

- ***Upon completing this segment of training, participants will be able to:***
 - Articulate the role of a Title IX Coordinator (and Deputies) in relation to the BIT.
 - Explain the type of cases that overlap between Title IX and the BIT.
 - Explain how Title IX interventions and cases differ from or are similar to other BIT cases.
 - Articulate what are the most prevalent cases in both worlds
 - Recognize what partnerships can and should be developed to assist with Title IX and BIT cases.

Title IX & BITs

Role of TIX Coordinator

Should the Coordinator be on the BIT?

➤ Pros:

- Provide a unique and institution-wide perspective
- Helpful to appropriately respond to Title IX issues
- They understand issues of accommodation & remedies, which are transferable to issues other than just Title IX
- Well-versed and trained in campus policies and procedures
- Student affairs-based Deputies typically have roles involving student conduct and/or residential education that can be valuable to a BIT

Title IX & BITs

Role of TIX Coordinator

Should the Coordinator be on the BIT?

➤ Cons:

- Many of the issues discussed by the BIT will have little or no applicability to the Coordinator
- It introduces another slate of meetings for an already full schedule; complications of scheduling another person
- May leave other valid issues out of the room: e.g.: disability services coordinator, women's center etc.
- Could lead to allegations of being bias: e.g.: too victim-centric

Title IX & BITs

Role of TIX Coordinator

Recommendation*

- Affiliate member of the BIT
 - The “we will ask you to attend when needed” group, rather than as a core member
 - Deputy Coordinator often makes a better fit as a core member
- Title IX Coordinator should be familiar with operations of the BIT
 - Consider having the Title IX Coordinator attend a few meetings to understand the process and approach

Title IX & BITs

Title IX Interventions

- Investigate, Stop, Prevent, Remedy
- Disciplinary
 - Interim Remedies/Actions – Individual & Community
 - Reporting Party & Responding Party
 - Investigation and Resolution
 - Sanctions
 - Long-term Remedies – Individual & Community
- Remedial/Accommodations
 - During disciplinary processes
 - Discrimination – Admissions, access, athletics, employment, etc.
 - **BIT often used to help facilitate remedies**

Title IX & BITs

Confluence of Cases and Systems

- Cases involving victims who are targeted on basis of sex, gender, gender identity, gender manifestation.
 - E.g.: Sexual assault, domestic violence, dating violence, stalking, hazing, threats of violence, vandalism etc.
- Act of violence reported to BIT requiring its intervention and necessitating Title IX-based response
 - Prompt and effective responses designed to stop the behavior, remediate the impact and prevent the recurrence
- Needs & Accommodations for both victim and accused

Title IX and BITs

Coordinating Responses and Systems

- Key overlap and Coordination between Title IX Coordinator and BIT
 - Ensure appropriate sharing of critical information
 - Provide the appropriate responses based on nature of situation
 - Title IX response should incorporate relevant BIT systems when reported behavior suggests that an individual's behavior poses a threat to themselves or to others
 - Mental health needs and assessments

Title IX Legal Hotspots for BITs

- Clery/VAWA Sec. 304
- Sexual Violence cases
 - Lawsuits by the accused
- Cross-constituency complaints
- Minors
- Student-athletes
- Bullying
- Accommodations for and providing appropriate avenues of support for victims

KEY GROUPS & UNIQUE CONSIDERATIONS

- Traits and characteristics of complainants and respondents
- Men
- LGBTQI or Same-sex
- International Students
- Students with Disabilities
- Pregnancy

Unique Considerations

- Populations (as complainant or respondent):
 - Men
 - LGBTQI
 - International Same-sex assault
 - Individuals with disabilities
 - Individuals with histories of mental health issues
 - Victims of drug-facilitated assaults
 - Repeat assaults
- Underreporting
- Stereotyping
- Internalized and/or institutionalized bias/prejudice
- Lack of informed, available services

Men and Sexual Violence

➤ Male Victims

- Frequency
- Intimate Partner Violence

➤ Gender norms

- Fear
- Embarrassment
- “No means no”
- Masculinity
- Self-defense
- Perceptions about sexual orientation

➤ Physiology

International Students

- Students, faculty, and staff
- Language barriers
- Cultural variance and differentiation
 - Religious considerations
 - Interaction between men and women
 - LGBT barriers
 - Use of alcohol and drugs
- Pride, shaming, and disowning
- Unfamiliarity with or trust in counseling and medical services and support

LGBTQI or Same-Sex Students

- Heterosexual or LGBTQI respondents
- Heterosexual or LGBTQI complainants
- Rates of sexual violence within the LGBTQI community
- Targeting based on (perceived) identity
- Reporting and resolution process may force “outing”
- Fear of betraying community – parties and witnesses
- Unique health concerns
- Gender-neutral language
- Religious overlay
- Familial tensions

Title IX & Transgender Students

- In February 2017, ATIXA updated and re-released its position statement on Title IX, Gender Identity and Gender Expression.
 - ATIXA believes that Title IX does protect students on the basis of gender identity.
- EEOC and numerous courts have determined gender identity is protected under Title VII.
- Sex and gender stereotypes and “gender non-conformity”

Title IX & Transgender Students

- Transgender students are disproportionately subjected to harassment and discrimination.
- Sexual Violence Statistics from the AAU's 2015 Climate Survey of 150,000 students:
 - Those identifying as TGQN have rates comparable, or in many cases slightly higher, than females.
 - Sexual Misconduct involving penetration by force or incapacitation
 - Undergraduates identifying as TGQN had the highest rates (12.4%), followed by undergraduate females (10.8%) and graduate TGQN students (8.3%).

Terminology

- **Biological Sex:** References chromosomes, hormones, reproductive organs, and genitalia.
- **Gender:** Refers to the 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, posture, mannerisms, speech patterns, and activities.
- **Transgender:** Umbrella term referring to a wide range of persons whose gender identity or expression may not match the gender assigned at birth.

Terminology (cont.)

- **Sexual Orientation:** Who a person is attracted to sexually or romantically, on a continuum (e.g., gay, lesbian, bisexual, heterosexual, asexual, and pansexual).
- **Queer:** An umbrella term referring to all LGBT persons.
- Transgender people may have *any* sexual orientation.

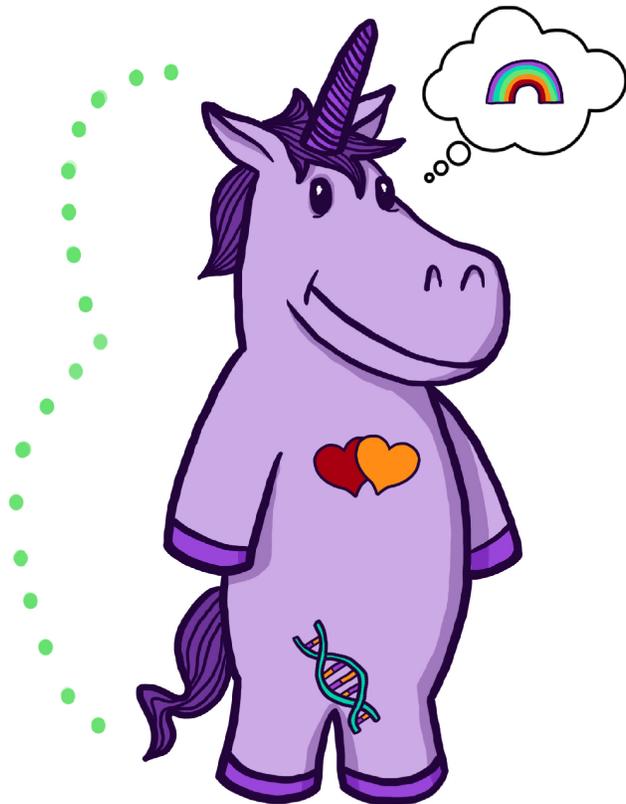
Title IX & Transgender Students

- Common Concerns and Current Challenges
 - State-based legislation.
 - Waffling OCR.
 - Conflict between Title VII (EEOC) and Title IX (OCR).
 - Possible federal legislation.
 - Discomfort and the claim of reverse discrimination.
 - Educating campus communities and constituencies.
 - Religious concerns
 - Religious Institutions, club or group membership and/or leadership, sharing of restrooms etc.

Title IX & Transgender Students

The Gender Unicorn

Graphic by:
TSER
Trans Student Educational Resources



To learn more, go to:
www.transstudent.org/gender



Design by Landyn Pan and Anna Moore

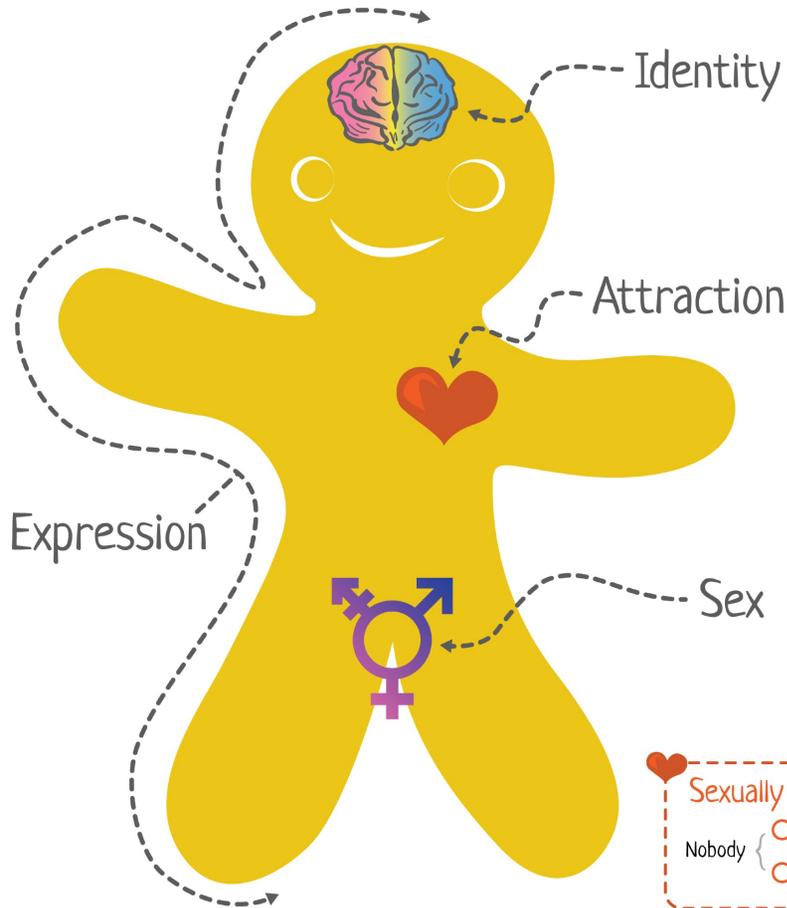
Title IX & Transgender Students

The Genderbread Person v3.3

by its pronounced **METROsexual**.com

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding. It's okay if you're hungry for more. In fact, that's the idea.

Plot a point on both continua in each category to represent your identity; combine all ingredients to form your Genderbread. 4 (of infinite) possible plot and label combos



Gender Identity

Indicates a lack of what's on the right.

Woman-ness
Man-ness

How you, in your head, define your gender, based on how much you align (or don't align) with what you understand to be the options for gender.

Labels: "woman", "man", "two-spirit", "genderqueer"

Gender Expression

Feminine
Masculine

The ways you present gender, through your actions, dress, and demeanor, and how those presentations are interpreted based on gender norms.

Labels: "butch", "femme", "androgynous", "gender neutral"

Biological Sex

Female-ness
Male-ness

The physical sex characteristics you're born with and develop, including genitalia, body shape, voice pitch, body hair, hormones, chromosomes, etc.

Labels: "male", "female", "intersex", "MtF Female"

Sexually Attracted to

Nobody { (Women/Females/Femininity)
(Men/Males/Masculinity)

Romantically Attracted to

Nobody { (Women/Females/Femininity)
(Men/Males/Masculinity)

In each grouping, circle all that apply to you and plot a point, depicting the aspects of gender toward which you experience attraction.

For a bigger bite, read more at <http://bit.ly/genderbread>

Title IX & Transgender Students

➤ Preferred Name & Pronouns

- Education Records
- Databases and record systems
- Identification Documents
- Classroom
- The need to educate our communities

➤ Maintaining student privacy

- Maintain privacy in relation to gender identity to the extent possible.
- Students' sex, including transgender status, should not be included as directory information.

Title IX & Transgender Students

- Where sex-segregated activities and facilities are provided, transgender students should be allowed to both **participate** and **access facilities** consistent with their gender identity.
- **Restrooms and Locker Rooms**
 - Schools may not:
 - Require transgender students to use facilities inconsistent with their gender identity, nor
 - Require use of individual-user facilities where other students are not made to do so.
 - Individual-user options can be made available to all students voluntarily seeking additional privacy.

Title IX & Transgender Students

➤ Athletics

- Beware of requirements that rely upon overly broad generalizations or stereotypes.
- discomfort with transgender students.
- NCAA and other organizations have specific policies regarding participation.

➤ Single-Sex Classes

- Transgender students are to be allowed to participate consistent with their gender identity.

Title IX & Transgender Students

➤ **Single-Sex Schools**

- Where Title IX does not apply, schools are not prohibited from inclusivity (i.e. a private undergraduate women's college may choose to admit transgender women).

➤ **Social Fraternities and Sororities**

- Exempt from Title IX, but may choose to be inclusive (i.e. a fraternity choosing to admit transgender men or a sorority choosing to admit transgender women).

DCL on Transgender Students

➤ **Housing and Overnight Accommodations**

- Schools should allow transgender students access to housing consistent with their gender identity.
- Schools should not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students.
- Schools can choose to honor a student's voluntary request for single-occupancy accommodations.
- Consider summer camps, etc.

Individuals with Disabilities

- Often subject to higher levels of sexual assault than other populations
- Ability to consent may be impacted
- Lack of prevention education
- Taboo
- Accommodations
- Comprehension

Pregnancy & Title IX: Title IX Regulatory Language

- **Title IX protects:**
 - Pregnancy
 - Childbirth
 - False pregnancy
 - Termination of pregnancy or
 - Recovery therefrom
- Must treat pregnant students “in the same manner and under the same policies as any other temporary disability.”

Pregnancy & Title IX: Title IX Regulatory Language

Physician Certification

- “Pregnancy and related conditions (cont.):
 - (2) A recipient **may require** such a student to **obtain the certification of a physician** that the student is physically and emotionally able to continue participation in the normal education program or activity **so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.**”

34 C.F.R. 106.40

Pregnancy & Title IX: Title IX Regulatory Language

Leave Policies

- Pregnancy creates “a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.”

Pregnancy & Title IX:

- “When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed.”
- “A school may offer the student alternatives to making up missed work
- The student should be allowed to choose how to make up the work.”

Pregnancy & Title IX Case Discussion



- Nov. 2018: Jill, a student at UDC, has had a difficult pregnancy and is six months pregnant. She has been able to maintain solid grades up to this point, but has just been informed by her doctor that she must stay in bed for the remainder of her pregnancy.

She approaches her advisor and asks him what her options are with her coursework.

Pregnancy & Title IX

Case Discussion



- Sasha is an elementary education teacher who has fulfilled all of her course requirements and is one-third of the way through her required student teaching experience when she has a baby. She faced medical complications with the birth and her doctor tells her she will miss at least a month of her student-teaching. If her graduation date is delayed, she will miss that year's hiring cycle.
- What are some possible approaches?

Victims of Drug-Facilitated Sexual Assault

- Perpetrators can appear to be rescuers.
- Prevented from detecting threats to safety.
- Inhibited from exercising self-defense.
- Inability to remember.
- Reporting patterns are affected.
- System's response affected by inability to recall what happened.
- Trauma can be misjudged and minimized.
- Unique form of trauma.

Fitzgerald, N. and Riley, K. (April 2000). "Drug-Facilitated Rape: Looking for the Missing Pieces." *National Institute of Justice Journal*.



CASE STUDY: THE RESTROOM



Case Study: The Restroom

- A transgender woman, Ellie, identifies and expresses as a woman. She has begun hormone treatments, but still has male genitalia. She has attended the community college for a year and half, using the women's restrooms for that entire time without incident.
- Recent national news coverage of so-called “bathroom bills” in several states has raised renewed awareness and strong feelings among students on both sides of the issue.

Case Study: The Restroom

- This afternoon, a female student, Jenn, wrote an email to the Title IX Coordinator which reads, in part:
 - *I would like to file a Title IX complaint because a male student is using the wrong bathroom. It is creating a hostile environment for me and if it does not get stopped, I will go to the press.*
 - *This morning I was in the bathroom and I saw a man who is dressed like a woman walk into the bathroom and into a stall. He said hello, but I was paralyzed by shock and fear. We were the only two in the bathroom and I worried about what he was going to do to me.*

Case Study: The Restroom

- *He entered a stall and I got out my phone and recorded a video of his feet under the stall and when he came out of the stall, I confronted him and demanded to know his name. He said “Ellie.” I was sure to record him washing his hands and leaving the bathroom. I told my parents about it and they were shocked and told me I should contact the police.*
- *I skipped my afternoon classes because I don’t feel safe in the bathroom or on campus. Please help.*

Case Study: The Restroom

- That same afternoon, Ellie, writes an email to the Title IX Coordinator which reads:
 - *Hi Dr. Miller, It's Ellie. I am writing because today something happened that made me very uncomfortable and I felt like someone was discriminating against me. I walked into the women's restroom and said hello to a girl I didn't know, but I was just being friendly. I then went into a stall and went to the bathroom.*
 - *While I was in the stall, I saw the girl lean her head down and peek at me from under the stall wall. She was holding a phone and pointing it in my direction. This freaked me out so I finished up quickly and exited the stall.*

Case Study: The Restroom

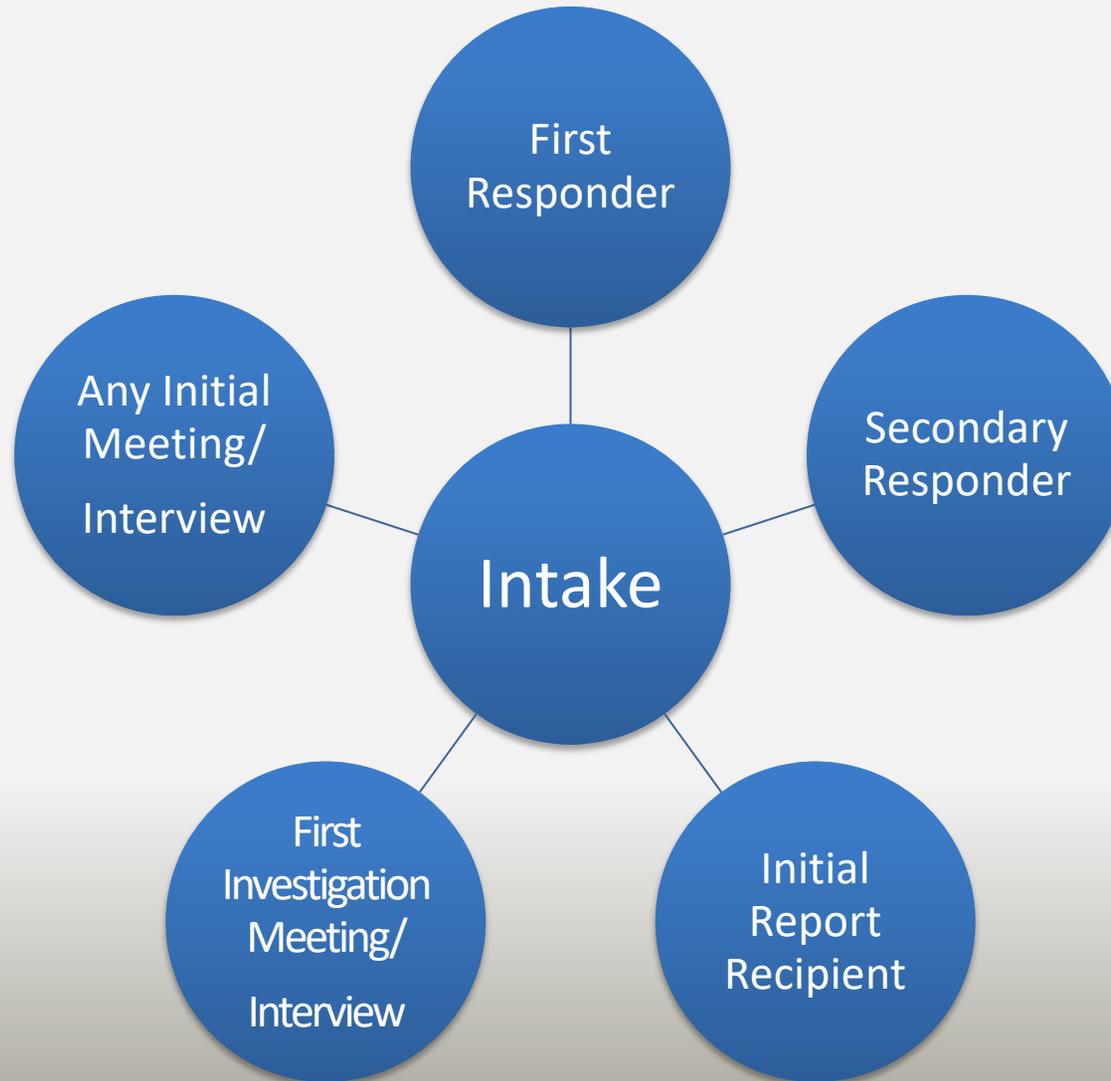
- *The girl looked really angry while holding her phone like she was recording and said, “What the hell are you doing in here? What is your name?!” I told her my name was Ellie, then quickly left.*
- *I am really worried that she has photos or video of me and that I told her my name. I don’t feel safe using the women’s bathrooms anymore. I am also filing a complaint that she took videos or photos of me in the bathroom. That’s not ok. I skipped my afternoon classes today because I didn’t want to be on campus. Please help.*

INTAKE & FIRST RESPONSE

➤ ***Upon completing this segment of training, participants will be able to:***

- Understand the role of a First Responder in a Title IX case.
- Explain the principles of appropriate intake in Title IX cases.
- Describe the range of protective and interim measures available to reporting parties in Title IX cases.
- Understand record-keeping and reporting for intake and first responders.
- Explain Title IX notice and reporting requirements

What Do We Mean By “Intake”?



Who Does Intake at the University

- Title IX coordinator/Deputy coordinators
- Title IX investigators
- Student Conduct staff
- Women or LGBTQI Center staff
- Student Affairs staff
- Residence Hall staff
- Campus advocates
- Campus Police/Public Safety
- Athletics staff
- Counseling Center staff
- Student Health staff
- Supervisors
- HR staff
- Faculty
- Who Else?

How Does Intake Differ from Advocacy?

Advocacy

- More “Partisan”
- Coordinating resources and remedies
- Longer-term
- Listening, guiding, supporting
- More legally-oriented

Intake

- More “Neutral”
- Connect with resources and remedies
- Initial contact
- Receiving information/report
- Less legally-oriented

Intake

- The goal is to provide timely resources to victims who seek you out.
- Empower the victim to make choices, including:
 - Reporting to Safety & Security or local law enforcement
 - Reporting to the Coordinator
 - Counseling and medical attention
 - Support groups
 - Resources on campus and in the community
 - Doing nothing is also a choice

Creating a Conducive Intake Environment

- Physical space
 - Neutral setting
 - Seating Arrangement
- Gender balance...
- Attendance
 - Who should attend?
- Advisors/Advocates
- Attorneys
- Parents
- Police

Intake: Our Language

Body Language

- Calm demeanor
- Open posture
- Eye contact
- Non-verbal encouragement (i.e., nodding)
- Attentive listening
- No physical touch without permission

Verbal Language

- Restating their comments
- Mirroring their language
- Avoiding blaming, moralizing, judging (especially with issues of alcohol and drugs)
- Allowing for silence
- Verbal encouragement
- Normalizing feelings

Intake Interview

- Address immediate needs.
- Listen. Allow them to be heard.
- Remember issues surrounding victimology and trauma.
- Help victim understand your role.
- Victim intake is typically not the place for developmental/insight conversations.
- Work to establish a baseline of relaxed conversation and establish a rapport before asking questions.
- Attendance of an advisor/advocate.

Intake Interview (Cont.)

- Handle emotions tactfully; allow breaks as necessary.
- Acknowledge their hesitation.
- Practice active listening.
- Ask questions directly and without embarrassment or hedging.
- Ask them to share a complete account of what occurred.
 - Good to have them give full story without asking questions, then, if your role requires it, drill down on details – allow victims to control the flow and the account.
 - “Tell me more.” Restate.

Intake Interview (Cont.)

- Now begin the “interview.”
 - Let them talk.
 - Give them a starting point if they don’t have one.
 - Drill down later.
 - Interrupt for questions only when you must.
 - Note: some strategies may change based on their demeanor.
 - Expressive
 - Angry
 - Resistant
 - Hesitant

Intake Interview (Cont.)

- Ask them if they have any questions about the process or the procedure.
 - Give them a copy of the brochure.
- Let them know that thoroughness is key and emphasize need for completeness.
- Make sure parties don't leave facts out because they are afraid of getting into trouble.
 - Discuss the amnesty provisions (if applicable).
- Create comfort with language and sensitive subjects.
 - Let them know that they will not offend or surprise you.

Intake Interview (Cont.)

- Be professional: Gather information; make no judgmental statements about the parties.
- Careful not to suggest answers in your questions.
- Depending on your role, use caution with extraneous comments that could be viewed as partisan.
 - “He should never have said that to you.”
 - “What she did was unacceptable.”
 - “I believe you.”
 - “We will make this right.”
 - “I want to apologize on behalf of the institution.”
- Notify of option for interim and long-term remedies; help facilitate provision of remedies as appropriate (more on this shortly).

Intake Interview (Cont.)

- Depending on your role, you may be gathering evidence.
 - Recording/note-taking
 - Note-taking tips
 - Pay attention to alcohol/drug consumption and timing.
 - Ask for relevant evidence/documentation (e.g., texts, emails, photos).
 - Ask whom they spoke to about the incident.
 - Provide copies of applicable policies and procedures.
 - Ask for witnesses and what those witnesses will address.
 - Use questioning to fill gaps, clarify, etc.
 - Timeline

Intake Interview (Cont.)

- Explain that you will be taking notes or recording and why.
 - Writing vs. Typing vs. Recording
- Acknowledge that they may have told others what happened multiple times already.
 - Ask who else they have talked to about the incident.
- Ask if they have written about this in any fashion:
 - Blog
 - FaceBook/Twitter/Social Media
 - Journals or other writings
 - Texts
 - Video journals

Intake Interview (Cont.)

- When they are finished giving the initial statement:
 - Get clarifications –
 - Lots of open ended questions.
 - Use closed questions when resistant or necessary.
 - Give reminders.
 - Speak clearly.
 - Ask simple questions.
 - Cue with time reminders when you go back to assist recall.
 - Do not suggest an answer.
 - Do not appear.

Intake Interview (Cont.)

- At the end:
 - “Is there anything else you think is important for us to know?”
 - Are there any questions that you thought we might ask that we didn’t ask ?”
- What do you think the motivation for this complaint is? (Only ask if you have already not been told this information.)

Intake Interview (Cont.)

- To conclude (some investigators do this earlier to assist with empathy):
 - Find out if their academics and/or work have been affected.
 - Ask how this has affected them emotionally and /or physically.
 - Discuss counseling options if they are not already connected.
 - NOTE: Challenges that this may provide when there is not an advocate.

Intake Interview (Cont.)

- Discuss interim remedies that may be taken:
 - No contact orders
 - Interim restrictions or suspensions
 - What this means: academics and timelines
 - Class changes
 - Living arrangements
- Discuss non-retaliation.
 - Give examples of retaliation, and to whom it should be reported immediately.

Intake Interview (Cont.)

- Let reporting parties know the next steps and when they will hear from you, and that they can contact you anytime with questions or any problems that arise.
 - Get their contact information.
 - Voicemail?
 - Email?
 - Text?
 - Provide timelines if possible.

Common Interim & Long-Term Remedies for Students

- No-contact orders
- Adjusting course schedules, coursework, groupwork etc.
- Residential life adjustments
- Transportation
- Accommodations
- Providing counseling services
- Providing medical services
- Providing academic support services, such as tutoring
- Re-take a course/withdraw from a class without penalty
- Refunds, transcript adjustments
- Incompletes and Independent Study
- Taking actions to prevent retaliation
- Campuswide training and education initiatives & programming
- Referral to and facilitate connection with police and community resources

Common Interim & Long-Term Remedies for Faculty & Staff

- No-contact orders
- Providing an escort
- Adjusting work schedules
- Adjust supervisory/reporting arrangements
- Providing counseling services (EAP, etc.)
- Paid Leave
- Unpaid Leave (use caution)
- Adjusting
- Taking actions to prevent or redress retaliation
- Training and education initiatives
- Supervisor notification
- Referral to and facilitate connection with police and community resources
- Sensitivity training and educational programming

Prevention: Bystander Intervention

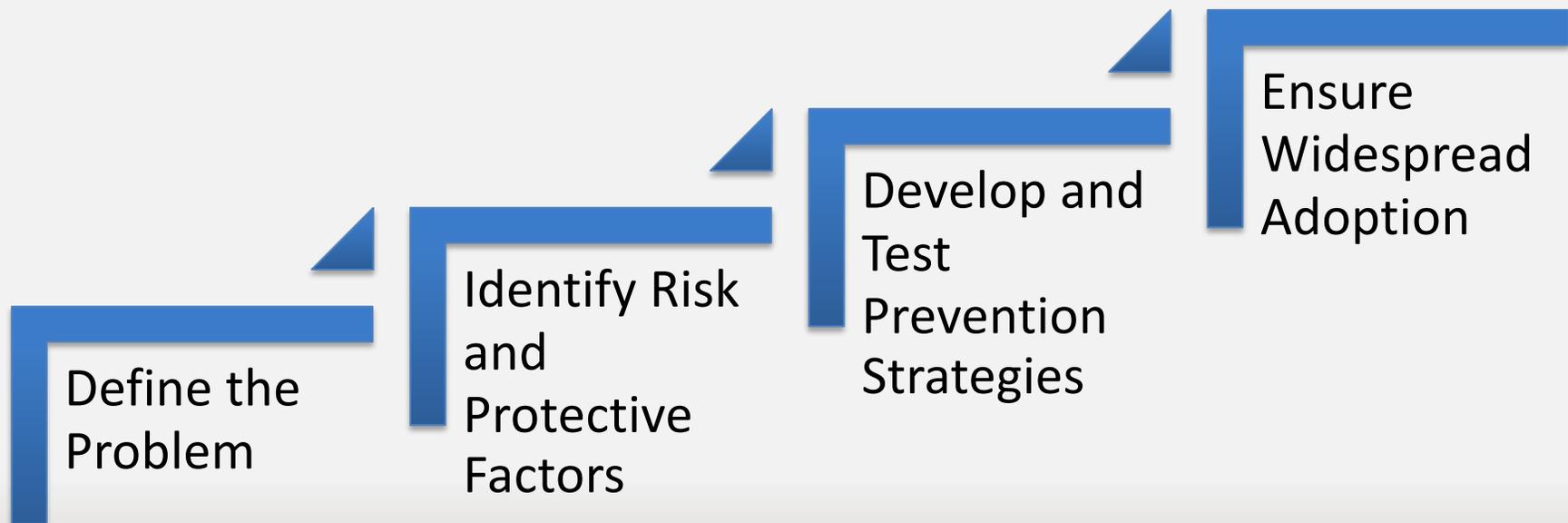
- Primary Prevention - Bystander intervention as prevention is among the few approaches proven to prevent injury and harm before it occurs
- Bystander intervention seeks to use a community-based prevention approach to enable bystanders to take an active role in preventing violence and interrupting unsafe or problematic interactions.
- “Pro-social bystanders” are those who intervene in a positive fashion.

Bystander Intervention 101

Basic steps of Bystander Intervention

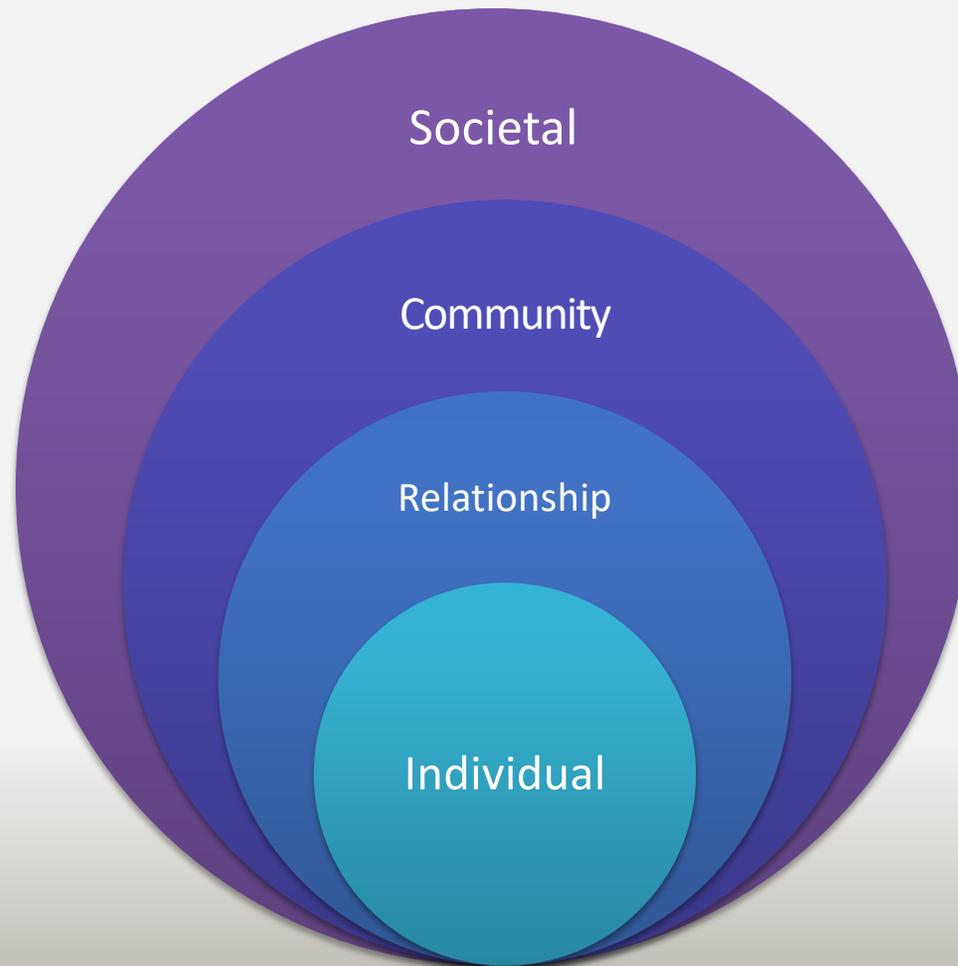
1. Notice the event
2. Interpret it as a problem
3. Decide if you have a responsibility to act
4. Determine a form of safe assistance you can provide
5. Provide assistance

Prevention: Public Health Approach



[See: www.cdc.gov/ViolencePrevention/overview/publichealthapproach.html](http://www.cdc.gov/ViolencePrevention/overview/publichealthapproach.html)

Prevention: Social-Ecological



www.cdc.gov/ViolencePrevention/overview/social-ecologicalmodel.html

Spectrum of Prevention (Cont.)

Influencing Policy and Legislation

Changing Organizational Practices

Fostering Coalitions and Networks

Educating Providers

Promoting Community Education

Strengthening Individual Knowledge and Skills

*See: www.preventioninstitute.org/component/taxonomy/term/list/94/127.html;
www.preventioninstitute.org/images/stories/Images/Spectrum.jpg*

PREVENTION: THE SEVEN Cs

1. Cogent
2. Community-wide
3. Collaborative
4. Consistent
5. Compliant
6. Comprehensive
7. Centrally-planned

7C'S

Note: The Seven C's are copyrighted to The NCHERM Group, LLC.

Contact Information

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