



SEXUAL HARASSMENT TRAINING

Community Colleges of Spokane

Presented by

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BRIEF LEGISLATIVE HISTORY

- 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 race, sex, color, religion, sex or national origin.
- 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.

Title IX

20 U.S.C. § 1681 & 34 C.F.R. Part 106

“(1972) 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.”

IX

Title IX

- Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in **all areas of education**.
 - Applies to **non-discrimination based on sex/gender** to all recipients of federal funds, both public and private institutions
 - Applies to issues of **program equity**, such as in athletics, and also to **sexual harassment and sexual assault**.
- In addition to the implementing regulations, the guidelines for compliance with Title IX are provided by the U.S. Department of Education, Office of Civil Rights:
www2.ed.gov/about/offices/list/ocr/docs/shguide.html

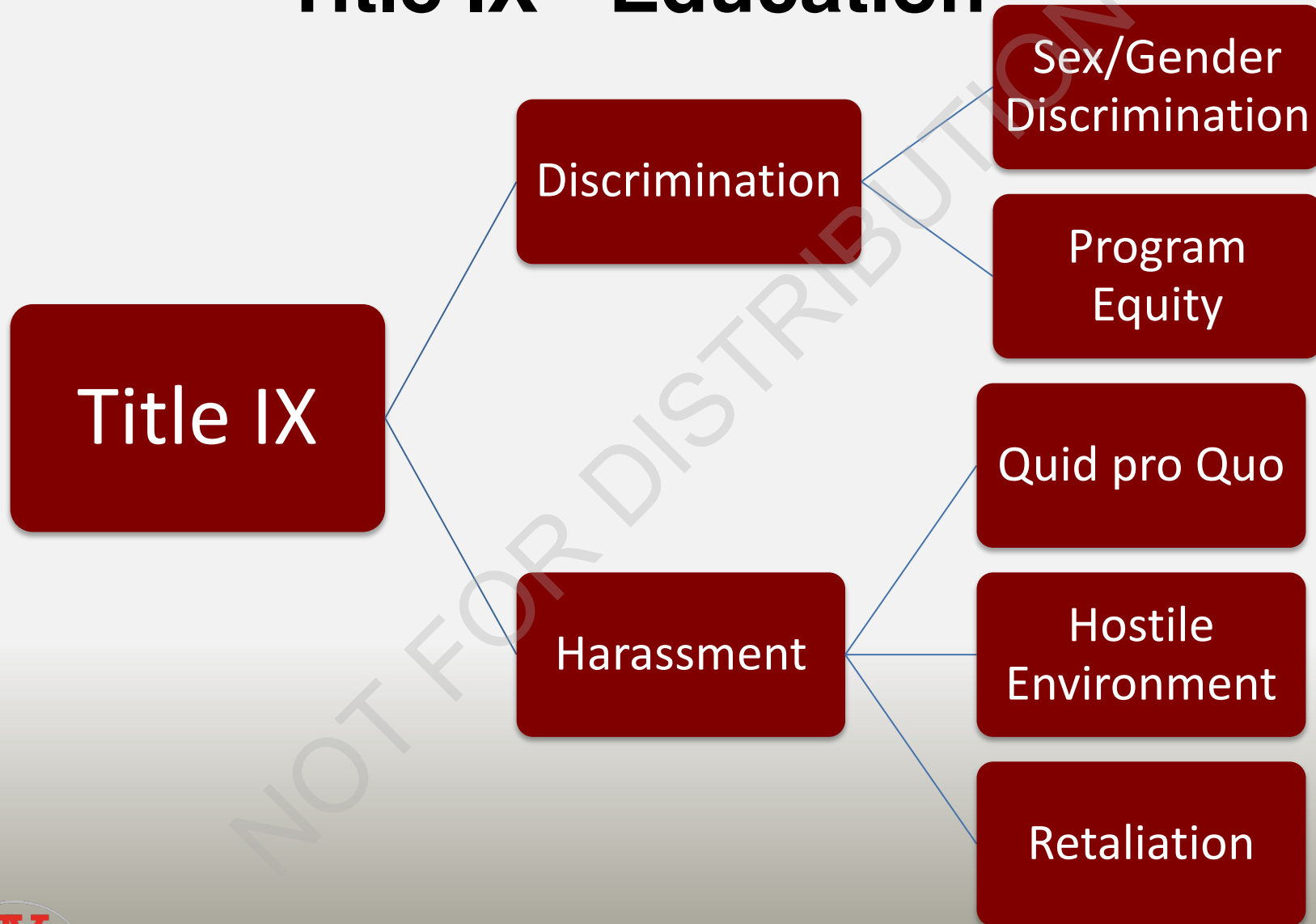
CASE HISTORY

- *Cannon v. University of Chicago*, 441 U.S. 677 (1979)
- *North Haven Bd. Of Education v. Bell*, 452 U.S. 512 (1982)
- *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)
- *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992)
- *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998)
- *Davis v. Monroe County Bd. of Education*, 526 U.S. 629 (1999)

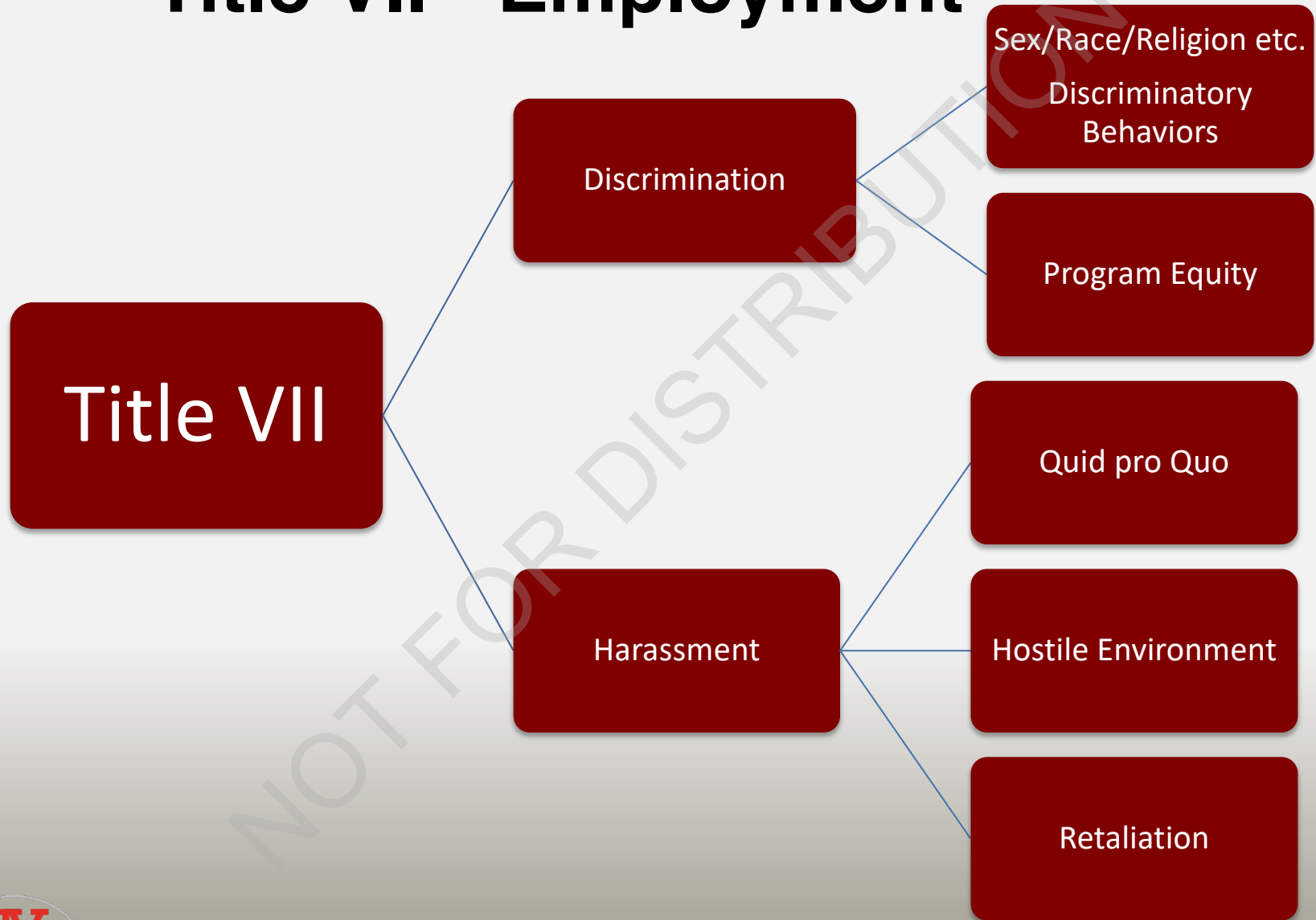
GUIDANCE HISTORY

- 1997 Guidance → 2001 Revised Sexual Harassment Guidance.
- 2011 Dear Colleague Letter (The “DCL”).*
- Questions and Answers on Title IX and Sexual Violence (April 2014).*
- 2015 Dear Colleague Letter, Dear Coordinator Letter & Resource Guide.
- 2016 Guidance on Transgender Students.*
- 2017 Interim Guide: Q&A on Campus Sexual Violence.
- Coming Soon: 2018 Guidance!
- “Not Alone” – White House Task Force to Protect Students From Sexual Assault (April 2014).
- Also: The Clery Act, VAWA 2013: Section 304.

Title IX - Education



Title VII - Employment



“Responsible Employee”

- A “**responsible employee**” includes any employee who:
 - Has the authority to take action to redress the harassment (Titles VII & IX);
 - Has the duty to report harassment or other types of misconduct to appropriate officials (Titles VII & VII);
OR
 - Is someone a student could reasonably believe has this authority or responsibility (Title IX).
- Accordingly, colleges and universities need to ensure that employees are trained regarding their obligation to report harassment to appropriate administrators.

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.

Training For Responsible Employees

Employees must be trained so that:

- Those with authority to address harassment know how to respond appropriately.
- Other responsible employees know that they are obligated to report harassment to appropriate officials.
 - Must understand:
 - Knowledge of institutional and community resources.
 - Information regarding reporting.
 - Who to report to.
 - What to report.

Institutional Requirements

Thorough	Reliable	Impartial
Prompt	Effective	Equitable
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community

Investigation (also for Title IX - prompt & fair under VAWA Sec. 304)

Process

Remedies

Sexual Harassment In General

Sexual harassment can include any unwelcome verbal, written, visual or physical conduct which offends, denigrates or belittles an individual because of a sexual or gender based characteristic.

THREE TYPES OF SEXUAL HARASSMENT

1. Hostile Environment
2. *Quid Pro Quo*
3. Retaliatory Harassment

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

Quid Pro Quo

- This form of sex or gender-based harassment relies heavily on a power or authority imbalance between those involved, such as an intimate relationship between a supervisor and a supervisee or a faculty member and a student. Quid pro quo literally means “something for something” or “this for that” in Latin, implying a trade. Under the law, the trade is suspect when a power imbalance is in play

Quid Pro Quo

The power or authority imbalance can be formal or informal. In some instances, the authority or power over another is formalized in terms of structure or hierarchy, such as supervisor-supervisee or faculty-student, where the student is in the faculty member's class. At other times the power or authority can be informal, such as a faculty member who offers to write a letter of recommendation for a student in exchange for sexual favors. The use of leverage or threats can both negate the validity of a person's consent to sexual activity as well as create a quid pro quo harassment situation.

Quid Pro Quo

It May Not be a

Compliment

It Could be

Harassment

Quid Pro Quo

- Consensual Relationships
 - Absolute prohibition vs. No Prohibition
 - The Reporting Requirement – Why?
- “Fraternization”
 - What is it?
 - What are the risks?
 - Navigating the waters.

Hostile Environment

- For Titles VII or IX to apply, conduct or speech must reach the level of creating a hostile environment. Understanding at what point harassing conduct rises to the level of hostile environment is therefore a critical element in addressing issues of sex and gender-based harassment.

Hostile Environment

The U.S. Supreme Court defined hostile environment in a Title IX context in 1999, noting that the unwelcome conduct of a sexual nature must be “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to employment or educational opportunities, access to activities or benefits provided by the school.

Hostile Environment

- A hostile environment is created when sexual harassment is:
 - sufficiently **severe**, or
 - **persistent or pervasive**, and
 - **objectively offensive** that it:
 - unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social, and/or residential program.
 - Or (Under VII) creates an “abusive work environment. The behaviors must be demonstrated to be on the basis of the protected class.
- From both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

Hostile Environment

Determining if conduct or speech rises to the level of a hostile environment requires an understanding of the meaning of the terms severe, persistent/pervasive, objectively offensive, and an understanding of what constitutes an unreasonable interference with educational or employment access. Meeting each element is not necessary to find a hostile environment.

Conduct need not be severe, **and** persistent or pervasive, and objectively offensive. Rather, conduct can be sufficiently severe and objectively offensive that it creates a hostile environment. Similarly, persistent or pervasive conduct that does not qualify as severe, can, in tandem with objective offense, create a hostile environment.

“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.”
— (Q&A: A-3)

“Severe”

- Physical is more likely to be severe without need for repetition: “attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks” (2001 Guidance).
 - Non-consensual sexual intercourse or contact are almost always sufficiently severe.
 - Consider the circumstances: E.g., the ability for victim to escape the harassment.
- Accompanied by threats or violence.

Sexual Harassment?



“Pervasive”

- Harassment is pervasive when incidents of harassment occur either in concert or with regularity”
- Widespread.
- Openly practiced.
- Well-known among students or employees — reputation of a department etc.
- Occurring in public spaces (more likely to be pervasive).
- “Frequency of the conduct is often a pervasiveness variable.
 - Intensity/duration.
- Unreasonable interference.
- A “gauntlet of sexual abuse” *Meritor v. Vinson*, 477 U.S. 57 (1986).

Pervasive Hostile Environment or Protected Speech?



“Persistent”

- Repeated. Measured by:
 - Intensity.
 - Duration.
 - Welcomeness.
- Defined:
 - Continuing to do something or to try to do something even though other people want you to stop.
 - Continuing beyond the usual, expected, or normal time; not stopping or going away (Merriam-Webster.com).

Persistent Sexual Harassment?



“Objectively Offensive”

- Reasonable person standard in context.
- “I know it when I see it...”
- Age and relationships of accuser and accused.
- Number of persons involved.
- Frequency.
- Severity.
- Physically threatening.
- Humiliation.
- Intimidation.
- Ridicule.
- Abusive.

Severe? Pervasive? Persistent? Objectively Offensive?

Student-Based Examples

- Female student “sexts” pictures of herself to a male classmate.
- Whiteboard writings.
- E-mailed pictures.
- “Revenge” pictures.
- Viewing porn on a computer in the library.

Severe? Pervasive? Persistent? Objectively Offensive?

Faculty-Based Examples

- Giving a student a back-rub.
- Post-class sex demonstration.
- Require students to read *50 Shades of Grey* and give an assignment to compare their own experiences against those from the book.
- Female faculty member repeatedly referring to male students as “penises.”
- Telling repeated “dirty” jokes in class.

Severe? Pervasive? Persistent? Objectively Offensive?

Staff-Based Examples

- Telling dirty jokes: In common area? Staff meeting? To a single individual?
- Sending porn to a colleague.
- Rolling eyes and making masturbation motion with hand at comments during a staff meeting.
- Coming up behind a colleague and giving a brief shoulder rub.
- Repeated staring at a colleague of the opposite sex; accompanied by occasional winking.
- Colleague repeatedly mentioning how much s/he likes a person's outfits.

Retaliatory Harassment

- Retaliation is defined as:
 - any adverse action taken against a person participating in a protected activity because of the person's participation in that protected activity.
- Also includes retaliation against the victim by the accused or by the accused's friends or others who are sympathetic to the accused.
- Also can include retaliation directed toward third parties because of their participation in a grievance process or for supporting a grievant.

Retaliation and Adverse Action

- Common definition of adverse action:
 - Significantly disadvantages or restricts the reporting party as to his or her status as a student or employee, or his or her ability to gain the benefits or opportunities of the program; or
 - Precluded from his or her discrimination claims; or
 - Reasonably acted or could act as a deterrent to further protected activity.
 - The U.S. Supreme Court and the federal courts have defined adverse action very broadly.

Q&A AND WRAP-UP



QUESTIONS?

THANK YOU!

Questions?

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