



Title IX Issues – Home and Abroad

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Disclaimers

- ▶ The Title IX space is a complex and rapidly evolving regulatory field – please consult your Title IX Coordinator and General Counsel early and often
- ▶ Guidance you heard two years ago may have radically changed – if you have current issues, consult the Title IX Coordinator and General Counsel
- ▶ I am not speaking on behalf of the University of Georgia
- ▶ This presentation does not constitute legal advise

The Regulatory Framework

- ▶ Title IX of the Education Amendments of 1972 (“Title IX”)
- ▶ Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”)
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- ▶ State law
- ▶ Policies of Boards of Regents
- ▶ Institutional Policies

The Big Picture – Title IX and Regulations

- ▶ Title IX prohibits discrimination on the basis of sex in any federally funded educational program or activity.
- ▶ The Clery Act requires reporting on certain types of crimes occurring on campus and other places “controlled” by an institution.
- ▶ VAWA expanded the reporting of Clery Act to domestic violence, dating violence, and stalking, and expanded outreach obligations.
- ▶ Dept. of Education Office of Civil Rights has issued “Dear Colleague Letters” as sub-regulatory guidance to explain college obligations
- ▶ See <https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq>
- ▶ See http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
- ▶ See https://www.whitehouse.gov/sites/default/files/docs/vawa_improvements_1_pager.pdf

April 2011 Change of Focus

- ▶ While Title IX had applied since 1972, OCR began actively focusing on Title IX's use as a means to combat sexual violence within the last 5-6 years
- ▶ **THE Dear Colleague Letter** was issued on April 4, 2011:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>
- ▶ In 2014, OCR issued Questions and Answers On Title IX and Sexual Violence:
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

Cultural Impacts On the Title IX Framework

- ▶ Rolling Stone's Article on UVA
- ▶ Publicized issues with college football and Title IX
 - ▶ Florida State
 - ▶ Vanderbilt University
 - ▶ Baylor University
- ▶ Senators Clair McCaskill and Kirsten Gillibrand
- ▶ White House Task Force
- ▶ NotAlone.gov
- ▶ The Hunting Ground Movie



See <http://itsonus.org/#landing>

Example: Do you recognize her?



See:

<http://columbiaspectator.com/news/2014/05/16/frustrated-columbias-inaction-student-reports-sexual-assault-police>

Example: What About Now?



See: <https://news.artnet.com/art-world/columbia-students-striking-mattress-performance-92346>

Regulatory Reaction Goes Local

- ▶ State legislatures jumped into the Title IX space
 - ▶ North Carolina specifically allows attorney participation
 - ▶ California and New York defined sexual consent
 - ▶ Minnesota mandates victims receive right to decide whether law enforcement conducts investigation

See:

<https://www.naspa.org/rpi/reports/state-legislative-developments-on-campus-sexual-violence-issues-in-the-cont>

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 - ▶ Obligates institutions receiving federal educational funding to respond to and address sexual harassment, sexual violence, etc.

On the Ground Impact

- ▶ Institutions are required to publicize a nondiscrimination notice
- ▶ Institutions are required to name a Title IX Coordinator
- ▶ Institutions are required to have and publicize its procedures for addressing allegations of sexual harassment or sexual violence
- ▶ Once notified of an allegation,* an institution has the obligation to undertake a prompt and equitable investigation into the merits of the allegation and take necessary actions to end, address, and ameliorate the impact of the harassment
 - ▶ *Likely where your individual obligations begin
- ▶ Institutions should identify resources for support

See <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

The “Responsible Employee”

- ▶ Definition: any employee who
 - ▶ Has the authority to take action to redress sexual violence;
 - ▶ Has been given the duty of reporting incidents of sexual violence or other misconduct; or
 - ▶ Whom a student could reasonably believe has this authority or duty.
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- ▶ Beware of the confidentiality trap....
- ▶ Application
 - ▶ Review your institutional policies
 - ▶ You are probably a responsible employee, especially on a study abroad program
 - ▶ You probably do not have the right of confidentiality

Title IX Applies to More Than Sexual Assault

- ▶ Title IX applies to sex-based discrimination and harassment, and sexual assault is a subcategory
- ▶ Your institutions should have a sexual harassment and discrimination policy that prohibits generally:

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 - ▶ Words or conduct of a sexual nature or based on sex, when:
 - ▶ Submission to or rejection to such conduct is used to make employment or educational decisions;
 - ▶ Submission to such conduct is explicitly/implicitly a term of employment or educational status; or,
 - ▶ Such conduct is sufficiently severe to interfere with the employment or educational environment

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 - ▶ Such conduct is sufficiently severe to interfere with the employment or educational environment
 - ▶ Differential treatment or opportunities based on sex (pregnancy, gender identity, or sexual orientation)

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Title IX in Academe – Sources of Risk

- ▶ Student-on-student conduct, in and out of the classroom & off campus
 - ▶ Includes conduct in off campus housing
 - ▶ Includes conduct on Spring Break
- ▶ Student-on-employee conduct, in and out of the classroom
- ▶ Employee-on-student conduct, in and out of the classroom
- ▶ University sponsored programming away from campus
- ▶ Social media
- ▶ Faculty-student relationships (and related prohibitions)
- ▶ Study abroad programs

Title IX Abroad

- ▶ Title IX technically applies in the United States, but there is mixed opinion of whether it applies overseas
- ▶ The Clery Act has specific reporting requirements applicable to certain places overseas.
- ▶ VAWA appears to apply overseas through Title IX and the Clery Act
- ▶ All of these laws apply to recipients of federal educational funding, so they all likely apply to your institution's programs abroad, partnerships abroad, and faculty led trips abroad. Consult your Title IX Coordinator or General Counsel if you have any doubt of whether Title IX applies to your study abroad program

Title IX Obligations Abroad

- ▶ U.S. institutions are probably obligated to take actions to end, address, and ameliorate the impact of the discrimination, including making a prompt and equitable investigation of the allegations
- ▶ Your home institution may require notice within a certain time frame
- ▶ Providing information/access to support resources to victims/survivors
- ▶ Therefore, if you are leading or participating in a program abroad, you may have specific obligations to respond.



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- ▶ Have a plan in place prior to leading or supervising students abroad
 - ▶ Identify diplomatic resources
 - ▶ Identify medical and psychological resources
 - ▶ Identify law enforcement resources

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- ▶ Get a sense of the local culture – would reporting lead to punishment of the victim/survivor?

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- ▶ Get a sense of the local culture – would reporting lead to punishment of the victim/survivor?
- ▶ If something happens, execute the plan

Take Away Guidance

- ▶ Learn about your institutions policies, resources, and the people who implement those policies
 - ▶ Don't assume your current institution's policies are the same as your former institution's policies
- ▶ Know what to do and who to contact if you learn of sexual violence
- ▶ If you are leading or supervising students abroad – have a plan in place prior to leaving

Questions?

Further Reading

- ▶ U.S. Department of Education Office of Civil Rights:
<http://www2.ed.gov/about/offices/list/ocr/index.html>
- ▶ THE Dear Colleague Letter:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>
- ▶ OCR Questions and Answers:
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