

Understanding the Higher Education Civil Rights Landscape

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We ask you to join us in creating a culture that reflects...

Access and Inclusion

and

Civility and Respect

...this week and in all aspects of our organization.

Land Acknowledgement

We acknowledge that we are located on the traditional and contemporary homelands of indigenous peoples, in particular the unceded lands of the Piscataway and Susquehannock peoples. We recognize the enduring presence of more than 7,000 indigenous peoples in Baltimore City, including the Piscataway, Lumbee, and Eastern Band of Cherokee community members.

We acknowledge the history of genocide and ongoing systemic inequities while respecting treaties made on this territory as a step towards reconciliation and strengthening relationships with indigenous peoples. We give thanks to the past, present and future stewards of this land and respect all tribal nation's sovereignty and right to self-determination. We aim to hold ourselves accountable to indigenous nations.

Excerpted from: <https://publichealth.jhu.edu/about/our-campus/land-acknowledgement>

Meet the Presenters

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Roadmap

- **Overview of recent guidance, decisions, or regulations**
 - New Guidance and Decisions: Title VI of the Civil Rights Act of 1964
 - New Regulations: Title IX of the Education Amendments of 1972
 - Pregnancy Accommodations, Supportive Measures
- **Case study:** Intersection of Title VI, Title IX, and Section 504
- **Processes for addressing discrimination/harassment reports**
 - Bias Incident Reporting Teams, Threat Assessment Teams, and Conduct Processes
- **Best Practices**
 - Collaboration among ADA/504 Coordinators, Title IX Coordinators, and Equity/Civil Rights Offices
 - Proactive initiatives

Title VI Overview

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.

Overview of Title VI Regulations (34 CFR Part 100)

- Regulations were last updated in 2003 (in large part to make clear that all programs and activities of a public university, or private university that receives FFA from the U.S. Department of Education, are covered by Title VI)
- Pursuant to Executive Order, DOJ and OCR have the authority to issue guidance regarding Title VI implementation

May 7 OCR TVI Dear Colleague Letter

- Makes clear that Title VI race/national origin, includes shared ancestry & ethnic characteristics (TVI does not apply to discrimination based solely on religion; OCR refers such complaints to DOJ)
- Extends to: Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry (makes clear TVI “encompasses antisemitism”)
- Purpose of a DCL: provide clarity; not create new legal standards
- Affirms Legal Frameworks: Hostile Environment and Different Treatment
- Reiterates First Amendment considerations with the following KEY CAVEAT: “The fact that harassment may involve conduct that includes speech...does not relieve a school of its obligation to respond under Title VI...”
- Includes specific section on “Expression of Views About a Particular Country”
- Provides eight (8) “real life” harassment examples (6 PSE; 2 ESE)

Recent OCR Title VI Higher Education Resolutions

- University of Michigan; City University of New York (CUNY system); Lafayette College; Muhlenberg College; University of Illinois; Drexel University; Brown University
- Addressed discrimination (different treatment) and harassment based on national origin, including shared ancestry and ethnic characteristics (e.g., antisemitic, anti-Arab)
- OCR investigated whether the universities treated persons differently and/or failed to respond promptly and effectively to reports of alleged hostile environment harassment
- All agreements reached were voluntary Section 302 Resolution Agreements (meaning *before* any findings that Title VI was violated)--nonetheless, OCR noted “serious concerns”

Key Takeaways: OCR & Title VI

- Need coordinated responses (multiple stakeholders)
- Central point of contact
- Relationship with campus/local police, plus TVI training
- Even if protected speech, evaluate whether hostile environment
- Must consider social media posts that contribute to a hostile environment on campus
- Title VI training for students, faculty, and staff
- “Hot spots” on campus
- Policy revisions and climate assessments

Title IX Overview

Overview of 2024 Title IX Regulations - 1

- Released on April 19, 2024; effective date is August 1, 2024*
- Regulations and preamble are over 1500 pages in length
- Require changes to institutional Title IX policies and procedures

*Note: As of December 2024, enjoined in 26 states and more than 675 colleges and universities

Overview of 2024 Title IX Regulations - 2

- Scope of Title IX has been returned to pre-2020 broader scope; sex discrimination includes discrimination based on: sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity
- Definition of sex-based hostile environment harassment also returns to pre-2020 definition (severe **or** pervasive; limits **or** denies)
- Include requirements regarding treatment of students, employees, and applicants who are pregnant or have related conditions
- Outline mandatory training requirements

Overview of 2024 Title IX Regulations - 3

- New regulations outline requirements for grievance procedures that apply to all forms of sex discrimination, including sex-based harassment and retaliation
 - Specify heightened requirements for grievance procedures for sex-based harassment claims where a student is complainant or respondent
 - Note: while schools are permitted to eliminate “live hearings,” if they do, there are prescriptive steps to follow where credibility assessments are relevant and in dispute, which can be administratively burdensome
 - Additional note: state laws in some jurisdictions may continue to require hearings

Pregnancy & Title IX (Key Definitions)

- Pregnancy or related conditions means:
 - Pregnancy, childbirth, termination of pregnancy, or lactation;
 - Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related conditions
- Note: privacy requirements around documentation and termination of pregnancy; not subject to the Title IX overall retention requirements

Pregnancy & Title IX (Related Conditions)

Preamble lists:

Pregnancy-related fatigue, dehydration (or the need for increased water intake), nausea (or morning sickness), increased body temperature, anemia, and bladder dysfunction; gestational diabetes; preeclampsia; hyperemesis gravidarum (i.e., severe nausea and vomiting); pregnancy-induced hypertension (high blood pressure); infertility; recovery from childbirth, miscarriage, or abortion; ectopic pregnancy; prenatal or postpartum depression; and lactation conditions such as swelling or leaking of breast tissue or mastitis.

Pregnancy & Title IX (Key Definitions) - 2

- Parental status means: the status of a person who with respect to another person who is < age 18, or 18 or older but incapable of self-care due to physical/mental disability, is:
 - A biological parent; adoptive parent; foster parent; or stepparent;
 - A legal custodian or guardian;
 - In loco parentis with respect to such person; or
 - Actively seeking custody, guardianship, visitation, or adoption of such a person
- Cannot treat differently *on the basis of sex* with respect to parental, familial, or marital status (but reasonable modifications for parents not required in same way as for students who are pregnant/have related conditions)

Pregnancy & Title IX (Employee Responsibility)

- When an employee is notified by a student (or person with legal right to act on their behalf) of a student's pregnancy or related condition, *unless the employee reasonably believes that the Title IX Coordinator has been notified*, the employee must:
 - Promptly provide that person with:
 - The Title IX Coordinator's contact information; and
 - Inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity

Pregnancy & Title IX

(*New* TIX Coordinator Responsibilities)

- Once notified of a student's pregnancy or related conditions, the Title IX Coordinator must coordinate the following specific actions:
 - Provide information about the University's nondiscrimination obligations, specific obligations regarding pregnancy and related conditions, and obligations to prevent sex-based discrimination, including harassment
 - Facilitate **reasonable modifications**
 - Allow voluntary access to separate, comparable portions of program
 - Allow voluntary leaves of absence
 - Ensure access to lactation space
 - Limit requirements for supporting documentation
 - Ensure comparable treatment to other temporary medical conditions
 - Limit requirements for certification to participate

Pregnancy & Title IX (Reasonable Modifications)

- Must make reasonable modifications to policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the education program or activity
 - Must be based on the student's individualized needs
 - Must consult with the student (akin to an “interactive process”)
 - A modification that the University can demonstrate would fundamentally alter the nature of the education program or activity is not a reasonable modification
 - Student has discretion to accept or decline offered reasonable modification; if accept, the University must implement (but there is no appeal right if decline)

Pregnancy & Title IX

- Examples of **Reasonable Modifications** from the 2024 Title IX Regulations:
 - Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom;
 - Intermittent absences to attend medical appointments;
 - Access to online or homebound education;
 - Changes in schedule or course sequence;
 - Extensions of time for coursework and rescheduling of tests/exams;
 - Allowing a student to sit or stand, or carry or keep water nearby;
 - Counseling;
 - Changes in physical space or supplies (e.g., access to larger desk or footrest);
 - Elevator access

Pregnancy & Title IX (Documentation)

- The University must not require supporting documentation unless:
 - Necessary and reasonable to determine reasonable modifications (not more than is needed to confirm)
 - Not deemed to be reasonable and necessary when need is obvious, such as:
 - Need a bigger uniform
 - Previously provided supporting documentation
 - Student states/confirms pregnant, and asks to:
 - carry or keep water nearby and drink it, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom
 - Lactation needs (simple request is sufficient)
 - Available to students for reasons other than pregnancy without submitting supporting documentation

Pregnancy & Title IX

- The University must treat pregnancy and related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the University administers, operates, offers, or participates in
- The University must not require a student who is pregnant or has related conditions to provide certification from a healthcare provider that they are able to participate in a class, program, or extracurricular activity unless:
 - The certified level of physical ability or health is necessary for participation
 - Such certification is required of all students for participation
 - The information obtained is not used as a basis for discrimination

Lactation & Title IX

- Must ensure *access*
- Must be a space other than a bathroom that is clean, shielded from view, and free from intrusion of others
- State or local laws (and best practice!) may require more specific features, such as a chair, flat surface, electrical outlet, running water, or refrigerated storage
- Under TIX, Institutions have discretion on size, number, and administration of lactation spaces...BUT, important to be mindful of “access” after regular business hours
- No supporting documentation required! Must provide access upon request

Intersection of Title IX & Disability Law

- A healthy pregnancy is not a disability, but can require “reasonable modifications” under the 2024 Title IX regulations
- Some pregnancy or related conditions may substantially limit a major life activity (e.g., walking standing, sitting)
- ADA/504, PWFA, Title IX all require an **interactive process**

Intersection of Title IX & Disability Law: Practical Considerations

- Under 2024 regulations, the Title IX Coordinator may delegate the reasonable modification duties to personnel “who are best positioned to perform them...including those who support students with disabilities”

BUT: Title IX Coordinator has ultimate responsibility and therefore there must be close coordination

ALSO: Training is important, as requirements differ from what Disability Services typically would require under ADA/Section 504

Intersection of Title IX & Disability Law - 2

From June 2022 to the present, OCR has issued five (5) resolution letters/agreements involving pregnant students, the majority of which identified concerns/violations under both Title IX and Section 504/ADA:

- Update TIX (and Disability) websites (how to report/get services)
- Make sure to assess if potential temporary disability (don't just defer to TIX)
- Ensure appropriate coordination/communication (not ad hoc)
- Ensure interactive process (TIXC must consult with student)
- Jointly/clearly define procedures/processes
- TIXC must coordinate where TIX obligation (even if delegate)
- Documentation is important (and different; consideration impact of *Dobbs*/protection of student privacy)
- Implementation of reasonable modifications must be effective

Website Exemplars: Title IX & Disability Law

- University of Illinois: [Pregnant and Parenting Students – Office of the Vice Chancellor for Diversity, Equity & Inclusion \(illinois.edu\)](#)
- University of Southern California: [https://eeotix.usc.edu/get-help/pregnant-parenting-students/](#)
- Stanford University: [5.9.1 Pregnancy, Childbirth, Adoption, and Lactation: Policy | Graduate Academic Policies and Procedures \(stanford.edu\)](#)

Title IX Supportive Measures

- Important to clarify that supportive measures, which are designed to provide access to education, support during a grievance process, and to prevent discrimination are different than disability-related accommodations or reasonable modifications for pregnant students
- Must be non-disciplinary, non-punitive, and not unduly burdensome either party
- Title IX Coordinator/Office responsible for facilitating
- New: Under 2024 regulations, must afford parties the opportunity to challenge, with review by impartial person not involved in imposing the supportive measure

Case Study

Case Study

A pro-Palestinian encampment has been set up on the main quad that students and others routinely traverse on campus near the dining hall and main library at Inclusive University by students, faculty, and unaffiliated persons. On Monday, a pro-Israel protest has occurred across from the encampment. The groups are chanting back and forth at one another. Participants of both groups have put lawn chairs and tents or otherwise are sitting in the major ingress and egress areas to the library and dining hall, blocking access. Two students who use wheelchairs are denied access to pass through. Further, when someone notices they are wearing attire perceived to be related to shared Jewish ancestry, they are called “money-grubbing, Zionist pigs” and one person spits at them. A third friend in the group who identifies as female tries to clear a path for her friends, and students in the scuffle grab her breasts and buttocks. The University police arrive and tell the pro-Palestinian encampment they must disband, but do not approach the pro-Israel protesters. The University police shove one of the wheelchairs out of frustration with the crowd, which appears to observers to be intentional. People on the scene start to post on social media, including sharing their personal opinions, taking sides, and including some offensive language and/or slurs. A group of students in the dining hall start to talk about what is going on and repeat offensive phrases loudly. Students and workers in the dining hall feel unsafe.

This is reported to Inclusive University? What are the next steps? Who are the campus partners that need to be involved?

Processes for addressing reports of discrimination/harassment

Bias Reporting, Conduct, and Threat
Assessment Processes

Bias Reporting Teams

- Provide a centralized reporting and recordkeeping system.
- Process for tracking and monitoring reports of bias-related incidents.
 - Periodic or annual reporting
 - Analysis of trends
- Hub for offering information about supportive resources and options for responding to incidents, including option to file a formal complaint.
- Often composed of trained representatives from equity office, residential living, academic deans/advisors, counseling center, student support services, teaching and learning center.

Bias Reporting Teams - 2

- Examples of outcomes through bias reporting process:
 - Educational meeting or conversation
 - Mediation/facilitated resolution
 - Restorative justice
 - Training
 - University-wide or targeted communication/message
 - Graffiti removal/clean up
 - Individual chooses to utilize formal process
 - No further individual action

Conduct Processes

- Title IX and Section 504 require institutions to have grievance procedures that provide for the prompt and equitable resolution of allegations of discrimination.
- Title VI requires institutions to address allegations of discrimination in their programs and activities.

Conduct Processes - 2

- Common elements of prompt and equitable grievance procedures:
 - Notice of the grievance procedure, including how and where to file a complaint
 - Application of the procedure to alleged discrimination based on protected categories by students, employees, third parties
 - Adequate, reliable, impartial investigation, including the opportunity to present relevant witnesses and other relevant evidence
 - Designated and reasonably prompt timeframes for the major stages of the complaint process
 - Notice to parties of the outcome and the basis for the decision
 - Assurance that the institution will take steps to prevent recurrence of prohibited conduct and remedy discriminatory effects

Threat Assessment Teams

- Team of university staff who identify, assess, manage, and address threats, or potential threats, to campus safety and security (including individual students, faculty, or staff).
- Comprised of employees from public safety, student conduct, Title IX coordinator, disability/accessibility services, legal counsel.
- Can be part of response to incidents of doxing, harassment (including online), threat to self or others, stalking, and other incidents based on protected categories.

Scenario 1

James is blind and identifies as non-binary. During a meeting with the accessibility coordinator (Tasha), James tells Tasha that their Linguistics professor does not refer to James using they/them pronouns, though James and other students have reminded the professor. James tried to file a bias report about their experience, but the form was incompatible with JAWS.

- What should Tasha do with this information?
- What are James' options to have their experience with the faculty member addressed?
- How can James make a report?

Scenario 2

Marc is autistic and has been approved to receive accommodations in class and for exams. Last week, Marc received a letter notifying him that a formal complaint of stalking had been filed against him because he repeatedly asked another student out on dates, walked closely behind the student as they returned home after two classes, and joined two student clubs after he learned that the student was a member of the clubs. Marc has been given 7 days to respond in writing.

- Can a formal complaint proceed against Marc given that he is registered as a student with a disability, and the described conduct may be consistent with that disability?
- Is there a role for the threat assessment team here?
- Can Marc receive accommodations during the conduct process?
- How can the Title IX/Equity and accessibility offices collaborate?

Practical Considerations

- Federal and local disability laws apply to conduct other than failure to accommodate requests for reasonable modifications.
- Students' reports to the accessibility office could trigger mandatory reporting obligations and a requirement to act under grievance procedures.
- Consider access to institutional programs and activities broadly when developing individual student accommodation plans.
 - Students may be eligible for accommodations during student disciplinary processes
- Review bias incident reporting data for trends regarding disability discrimination.
- **CAVEAT:** In some states, bias reporting has been challenged, in particular at public universities.

Collaboration: Section 504 Coordinators, Title IX Coordinators, and Equity/Civil Rights Offices: *Connecting the Dots*

Collaboration: Promising Practices

- Leverage events, such as Global Disability Awareness Day, Disability Pride Month, etc.
- Student Advisory Boards
- Multicampus stakeholder committees
- Leverage the arts (civil rights film discussions, such as *Crip Camp*, and inclusive art exhibits)
- Leverage intersectionality with student groups, employee affinity groups, and equity offices
- Accessibility Ally programs
- Report a Barrier (online tools for ease of reporting barriers)
- Joint websites with tools/training/resources
- Joint trainings for faculty, staff, students

Collaboration: Practical Tips

- Structure regular check-ins between Disability Services, Title IX, and/or other equity partners
- Plan/host joint projects/initiatives
- Host listen & learn sessions with your staff (learn what each other does and the opportunities to partner, clarify roles, leverage resources, etc.)
- Develop written protocols for information sharing
- Create an internal “Listserv”
- Identify shared areas of concern/opportunity (e.g., faculty who are reticent to modify their teaching modalities, even when may not fundamentally alter the course)
- Acknowledgment that disability, sex, gender identity, shared ancestry and ethnic characteristics, race, etc.–these are all civil rights and human rights... Better together!

Thank you for attending!

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