



Association of  
Title IX Administrators

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# Hot Topics in Title IX: Implications for the Field

University of Louisiana Title IX Summit

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# TNG

Strategic Risk  
Management Solutions

The logo for ATIXA features the letters 'A', 'T', 'I', 'X', and 'A' in a bold, sans-serif font. The 'A's are red, the 'T' is blue, and the 'I' and 'X' are dark blue.The logo for TNG features the letters 'T', 'N', and 'G' in a bold, sans-serif font. The 'T' and 'N' are dark blue, and the 'G' is yellow.The logo for NABITA features the letters 'N', 'A', 'B', 'I', 'T', and 'A' in a bold, sans-serif font. The 'N' and 'A's are teal, the 'B' is dark blue, and the 'I', 'T', and 'A's are dark blue.



# CONTENT ADVISORY

The content and discussion in this presentation will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

# AGENDA

- 1 Violence Against Women Act 2022 Reauthorization
- 2 Technology-facilitated Sexual Abuse
- 3 Title IX NPRM
- 4 Hostile Environment
- 5 Pregnancy & Pregnancy-related Medical Conditions

# **VIOLENCE AGAINST WOMEN ACT**

2022 Reauthorization

# VAWA REAUTHORIZATION 2022 SUMMARY

- Signed into law by President Biden as part of the Omnibus appropriations package in March 2022
- Reauthorizes all current VAWA grant programs until 2027
- Increases services and support for survivors from underserved and marginalized communities, including LGBTQIA+ survivors
- Supports State, Tribal, and local government efforts to prevent and prosecute cybercrimes, including cyberstalking and the nonconsensual distribution of intimate images
- Expands prevention education for higher education students
- **Effective October 1, 2022** unless other deadlines are specified in the Act

# DEFINITIONS – TECHNOLOGICAL ABUSE

- Amends 34 U.S.C. 12291 – Violence Against Women Act (1994)
  - New Definition
- **Technological Abuse** means an act or pattern of behavior that occurs within **domestic violence, sexual assault, dating violence or stalking** and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

# TECHNOLOGY-FACILITATED SEXUAL ABUSE

- Gender-based abuse facilitated via the use of communication technology or any other emerging technologies
  - Image-based Abuse
    - Recorded Sexual Assault
    - Deepfakes
  - Sexual Extortion
  - Doxing
  - Cyber Dating Violence
  - Cyber Stalking
  - Cyber Harassment



# TECHNOLOGY-FACILITATED SEXUAL ABUSE (CONT.)

- Common communication technology used to perpetrate Technology-facilitated Sexual Abuse:
  - Email
  - Text messages
  - Social media sites
  - Social networking platforms
  - Messaging apps
  - GPS and geopositioning data
  - Spyware
  - Other emerging technologies and online spaces

# IMAGE-BASED SEXUAL ABUSE

- The distribution of sexually graphic images of individuals without their consent.
  - Images originally obtained without consent
    - using hidden cameras
    - hacking phones
    - recording sexual assaults
  - Images consensually obtained within the context of a private intimate relationship that are later shared beyond the relationship
    - Non-consensual pornography
    - “Revenge porn”

# DEEPPFAKES

- The digital manipulation of audio and/or video recordings to create a new digital recording that appears to be real but is not.
  - Created by using audio and/or video editing software and artificial intelligence (AI)
  - Often used maliciously or to spread false information
- Many of the images created are sexual or pornographic in nature and target women or femme-presenting bodies.

# SEXUAL EXTORTION

- Threatening to expose harmful sex-based information unless an individual engages in unwanted sexual conduct.
  - Provide nude or sexually explicit images
  - Perform sex acts
  - Pay an amount of money (ransom)
- Conditioning an aid, benefit, or service on an individual's engagement in unwanted sexual conduct
  - Abuses of power or authority
- A form of sexual exploitation that uses coercion tactics to gain or continue sexual access

# DOXING

- The act of publishing identifiable private or personal information on the internet without the individual's consent.
  - Information originally obtained without consent (e.g., hacking, phishing scams)
  - Information consensually obtained within the context of a private relationship that is later used to inflict harm
- Often overlaps with other forms of technology-facilitated sexual abuse (i.e., image-based abuse, sextortion, cyber stalking, cyber harassment, cyber dating violence)

# CYBER DATING VIOLENCE

- Abuse via the use of communication technology, or any other emerging technologies by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - Use of technology to exert power and control over another individual
  - Often includes other forms of technology-facilitated sexual abuse (i.e., image-based abuse, sextortion, doxing, cyber stalking)

# CYBER STALKING

- The use of communication technology, or any other emerging technologies, to engage in a course of conduct directed at a specific person that would cause a reasonable person to —
  - Fear for that person’s safety or the safety of others; or
  - Suffer substantial emotional distress.
- Often includes efforts to monitor or surveil a current or former intimate partner
- Most cyber stalking behaviors are not protected by the First Amendment

# CYBER STALKING (CONT.)

## Forms of Cyber Stalking

- **Passive**
  - Obtaining publicly available information without detection
- **Invasive**
  - Deliberate acts intended to infringe upon or violate privacy
- **Duplicitous**
  - Deceptive acts used to gain access to information without detection



# CYBER HARASSMENT

- The use of communication technologies, or any other emerging technologies to harass or bully another person
  - Also called cyberbullying
  - Most often occurs on social media platforms or other online forums
- Engaging in repeat behaviors directed at a specific person with the intent to cause harm
  - Threats
  - Encouraging self-harm
  - Spreading gossip or posting rumors
  - Impersonation
  - Sharing private and/or personal information
  - Disparaging sex- and gendered-based speech
  - Hate speech

# DIFFERENCES BETWEEN CYBER STALKING & CYBER HARASSMENT

## Cyber Stalking

- Cause fear
- Maintain power and control
- Single perpetrator
- Perpetrator is often known to the Complainant
- Continuous cycle of incidents with multiple tactics

## Cyber Harassment

- Inflict harm
- Denigrate and/or humiliate
- Single or multiple perpetrators
- Perpetrator can be known, a stranger, or anonymous
- Often contained to a point in time with consistent tactics



# **APPLYING POLICY**

# TIX REGULATORY DEFINITIONS – § 106.30

**Sexual Harassment** is conduct on the basis of sex meeting one of the following conditions:

- An employee of the Recipient conditioning the provision of an aid, benefit, or service of the Recipient on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Recipient's education program or activity; or
- “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)  
“Dating violence” as defined in 34 U.S.C. 12291(a)(10)  
“Domestic violence” as defined in 34 U.S.C. 12291(a)(8)  
“Stalking” as defined in 34 U.S.C. 12291(a)(30)

# ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION

## **Sexual Exploitation (non-Title IX sexual harassment)**

- Occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.
- Examples of sexual exploitation include, but are not limited to:
  - **Invasion of sexual privacy**
  - **Non-consensual digital, video, or audio recording of nudity or sexual activity**

# ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION (CONT.)

- Examples (continued):
  - **Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity**
  - Engaging in voyeurism
  - Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex)
  - Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person
  - Intentionally or recklessly exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals
  - **Sexually-based bullying may also be a form of sexual exploitation**

# POLICY CONSIDERATIONS

- Substantially disruptive online conduct could still violate policy and be addressed under:
  - Institutional harassment/discrimination policies
  - Student Handbook/conduct policies
  - Technology/Acceptable Use policies
  - Employee Handbook/conduct policies
  - Professionalism standards
- But be mindful of the speech/conduct distinction and any applicable First Amendment boundaries
- Institution should still take steps to:
  - Provide support and resources to the Complainant to address any “downstream effects”



# **IMPACTS OF TECHNOLOGY- FACILITATE SEXUAL ABUSE**



# COMMON CHARACTERISTICS

- Individuals characterized as women, emerging adults, and sexual minorities (LGBT+) are at higher risk for victimization
  - Experience many of the same health consequences as victims of in-person sexual harassment/ sexual misconduct
  - Experience lower levels of psychological well-being and higher levels of somatic symptoms
  - Often increase substance use and engagement in other risky behaviors
  - Often withdraw from those around them and may begin to miss class(es) or work

# IMPACTS OF TECHNOLOGY-FACILITATED SEXUAL ABUSE

Impacts experienced by victims include but are not limited to:

## Physical

- Fatigue/low energy
- Reduced sleep/appetite
- Gastrointestinal problems
- Pain in back or joints
- Headaches

## Psychological

- Anxiety
- Depression
- PTSD symptoms
- Suicidal ideation or attempts
- Substance abuse

## Academic

- Limited engagement with others
- Increased incidents of absenteeism
- Lower academic performance
- Lower GPA
- Higher drop-out rates



# **APPLYING SUPPORTIVE MEASURES**

# TITLE IX ESSENTIAL COMPLIANCE ELEMENTS

**In response to notice of sexual harassment/sexual misconduct, the institution must:**

- Offer supportive measures
- Offer an opportunity to file a formal complaint

**Once an official with authority has received a complaint of sex-based stalking, the institution must:**

- Take immediate and appropriate steps to **investigate**  
Take prompt and effective action to:
  - **Stop** the harassment
  - **Prevent** the recurrence
  - **Remedy** the effects

# SUPPORTIVE MEASURES

- Provided to all parties throughout the process:
  - Non-disciplinary, non-punitive
  - Individualized
  - Restore or preserve equal access
  - Without unreasonably burdening other party
  - Protect safety of parties or environment, or deter sexual harassment
- If supportive measures are not provided, document why not

# COMMON SUPPORTIVE MEASURES

- Referral to counseling or other health services
  - Referral to the Employee Assistance Program
  - Visa and immigration assistance
  - Community or community subgroup education
  - Altering housing situation (if applicable)
  - Altering work arrangements for employees
  - Safety planning
- Providing school safety escorts
  - Transportation assistance
  - Implementing contact limitations (no contact orders)
  - Academic support, extensions of deadlines, or other course-related adjustments
  - Trespass or Be on the Lookout (BOLO) orders
  - Emergency notifications
  - Increased security and monitoring of certain areas

# KEY TAKEAWAYS

- Technology-facilitated sexual abuse should be included as part of college and university Title IX education and prevention program efforts
  - Education for faculty and staff should include information regarding the “real” nature of abuse within digital environments
  - General education efforts should include information to combat victim blaming and minimalization
- Victims experience a unique and prolonged form of trauma that may require longer-term support
- Rates of victimization are likely to increase in frequency among U.S. college students

# TITLE IX NOTICE OF PROPOSED RULE MAKING (NPRM)

New Federal Title IX Regulations



# NPRM OVERVIEW

- The Department of Education (ED) released a 701-page Notice of Proposed Rulemaking (NPRM) on June 23, 2022 – the 50<sup>th</sup> Anniversary of Title IX
- Published in the Federal Register on July 12
  - 60-day comment period ran until September 12
  - ED received over 210,000 comments
  - ED must now respond to all comments as part of the rulemaking process
- Final version likely will differ from NPRM
  - Less deviation expected than in the 2018 NPRM versus 2020 Regulations

# NPRM, GENERALLY

- Broader than the 2020 Regulations
  - Includes the behavior covered by the 2020 Regulations
  - Expands to provide procedures to respond to other forms of sex discrimination
- Elements of both Obama-era and Trump-era guidance/regulations
- Adds in greater flexibility
- Return to Stop, Prevent, Remedy,



# **SCOPE & APPLICABILITY**

# SCOPE

- Discrimination on the basis of sex
  - Sex stereotypes
  - Sex characteristics
  - Pregnancy or related conditions
  - Sexual orientation
  - Gender identity
- Sex-based harassment
- Gender identity and athletics coming later

§ 106.10; NPRM pg. 666

# HOSTILE ENVIRONMENT

- Hostile Environment Harassment (pg. 657-58)
  - Unwelcome sex-based conduct that is
  - Sufficiently severe **OR** pervasive, that, based on the totality of the circumstances **AND**
  - Evaluated subjectively and objectively
  - Denies or limits a person's ability to participate in or benefit from the recipient's education program or activity

§ 106.2

# SPOO VS. SORP

## SPOO (2020 Regulations)

Severe **AND** Pervasive **AND** Objectively Offensive

## SORP (2022 NPRM)

Sufficiently Severe **OR** Pervasive **AND** Evaluated Objectively  
**AND** Subjectively

# HOSTILE ENVIRONMENT (CONT.)

- OCR's proposed definition also provides factors for evaluating whether a hostile environment exists including:
  - Complainant's ability to access the education program or activity
  - The type, frequency, and duration of the conduct
  - The parties' ages, roles, and previous interaction(s)
  - The location and context of the conduct
  - The control the Recipient has over the Respondent
- Potential intersection with First Amendment

§ 106.2

# APPLICABILITY

- Education program or activity
  - Now includes conduct subject to recipient’s disciplinary authority and conduct in a building owned or controlled by a student organization official recognized by a postsecondary institution
  - Sex-based hostile environment occurring outside program, activity, or the United States
    - Downstream effect
  - Policy or practice preventing participation in a program or activity consistent with gender identity “subjects a person to more than de minimis harm on the basis of sex.”

§ 106.11; NPRM pg. 666

§ 106.31; NPRM pg. 668



# APPLICABILITY (CONT.)

- **Jurisdiction** includes:
  - Conduct subject to Recipient's disciplinary authority,
  - Conduct in a building owned or controlled by a student organization officially recognized by a postsecondary institution
- Removes geographical restrictions
  - Conduct outside the United States may need to be addressed under Title IX
    - Downstream (in-program) effects
    - Charging decisions may become more complicated

§ 106.11; NPRM pg. 666

§ 106.31; NPRM pg. 668

# If the conduct...

Occurred in your program or activity

AND/OR

Is subject to your disciplinary authority

AND/OR

Has led to a hostile environment within your program or activity

AND would meet Title IX, if proven...

**YOU LIKELY HAVE JURISDICTION**



# **PREGNANCY & RELATED CONDITIONS**

- Pregnancy Discrimination
- Reasonable Modifications
- Pregnancy Leave
- Lactation Space

# PREGNANCY DISCRIMINATION

- Pregnancy or related conditions:
  - 1) Pregnancy, childbirth, termination of pregnancy, or lactation
  - 2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation
  - 3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions
- Nondiscrimination
  - Cannot adopt policies, practices, or procedures
    - To treat a student **OR** employee differently based on current, potential, or past pregnancy related conditions

§ 106.2; NPRM pg. 655  
§ 106.21; NPRM pg. 667

# PREGNANCY DISCRIMINATION (CONT.)

- Admissions/Enrollment
  - No pre-admission or enrollment inquiries regarding marital status
    - Including asking “Miss or Mrs.”
    - Self-identification of sex is permissible if required from all applicants
- What’s Unclear?
  - Non-birthing parents
  - Scope of parental protections

§ 106.40; NPRM pg. 669-72  
§ 106.57; NPRM pg. 698-99

# RESPONSE TO PREGNANCY

- Providing Information
  - When an employee acquires knowledge of a student's pregnancy or related conditions by the student...the employee must inform that person of Title IX support
- TIXC required response:
  - Prohibit sex discrimination
  - Reasonable modifications (document it!)
  - Allow voluntary access to separate and comparable program, if desired
  - Voluntary leave of absence
  - Availability of lactation space
  - Grievance procedures for sex discrimination complaints

§ 106.40; NPRM pg. 669-72

# REASONABLE MODIFICATIONS

- Reasonable modifications may include:
  - Breaks to attend health needs
  - Breaks for breastfeeding or expressing breast milk
  - Absences for medical appointments
  - Access to online or homebound education
  - Changes in sequence or schedule of courses
  - Extensions or rescheduling examinations
  - Counseling
  - Elevator access

§ 106.40; NPRM pg. 669-72

# PREGNANCY-RELATED LEAVE

- Pregnancy or related conditions serve as a justification for a reasonable, voluntary leave of absence
  - Can be unpaid
  - Applies to employees and students
    - Even if there is no policy **or** the person does not qualify under the policy
- Upon return, the person should be reinstated to their prior or a comparable status
  - For employees, there should be no decrease in compensation
  - For students, this includes academic and extracurricular status

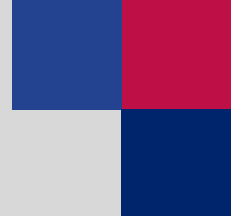
§ 106.40; NPRM pg. 670  
§ 106.57; NPRM pg. 699



# LACTATION TIME & SPACE

- Employees and students must be provided reasonable break times for breastfeeding or expressing breast milk
- Lactation Space
  - Not a bathroom
  - Clean, shielded from intrusion
  - Can be used by a student or employee, as needed

§ 106.40; NPRM pg. 669-72  
§ 106.57; NPRM pg. 699



**WHAT'S NEXT?**

# THINGS TO DO BEFORE IMPLEMENTATION

- Discuss policy decision points with stakeholders
- Work with your legal counsel to determine how the proposed regulations intersect with other policies and governing laws
- Prepare to expedite policy revisions at your institution
- Educate community about future changes
  - The final changes may be different from the NPRM
- Review current policies, practices, publications, and websites
  - Create a checklist of changes that will need to be made to each
- **KEEP FOLLOWING THE 2020 REGULATIONS!**

# ADDITIONAL PREGNANCY-RELATED CONSIDERATIONS

- The Department of Education (ED) released the Discrimination Based on Pregnancy and Related Conditions resource in October 2022
  - Title IX protects both students and employees from discrimination based on “pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom”
- Responses to pregnancy and pregnancy-related conditions must consider possible overlaps in obligations under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Title IX
- Broadens Title IX’s protections regarding pregnancy, pregnancy-related medical conditions, and parenting status



**THANK YOU!**

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