

# Title IX & Sex Discrimination

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Kate Lawson, Chief Title IX Officer

**Xavier University**

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# Contact Info

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**Kate Lawson**

**Chief Title IX Officer**

**Xavier University**

**513-745-3046**

**lawsonk1@xavier.edu**

# Goals

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- Key laws & guidance
- Rights of students, employees, visitors
- Institution responsibilities
- Moving the needle

# 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 education program or activity receiving federal financial assistance”



# Title IX

- **PROHIBITS** sex discrimination in federally-funded education programs & services
- **INCLUDES** sexual harassment, sexual violence, intimate partner violence, stalking, harassment based on sexual orientation and gender identity
- **PROTECTS** female, male, and GLB and/or T
- **REQUIRES** schools to respond to knowledge and reports of sex discrimination promptly & equitably
- **ENFORCED** by Dept. of Education Office for Civil Rights

# Remedies for Noncompliance

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- OCR complaint
- Sue in court for \$ damages/  
injunctive relief

# Duty to Respond Under TIX

- Preliminary investigation at least
  
- If school knows or reasonably should have known about sexual harassment that creates a hostile environment, it must take all reasonable steps to:
  - Eliminate the harassment
  - Prevent its recurrence; and
  - Address its effects
  
- Interim Measures

# Notice

- **ACTUAL**
  - ▣ Complaint filed
  - ▣ Responsible employee notified
  - ▣ Police report
  - ▣ Employee witnesses harassment
  - ▣ Indirect notice via flyers, media, online postings
  
- **CONSTRUCTIVE:** widespread, openly visible, or well known to students and/or staff





# “Responsible Employee”

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- Has authority to take action to redress harassment OR
- Has duty to report harassment to appropriate officials OR
- Is someone an individual could reasonably believe has the authority or responsibility

# Criminal vs. Title IX Process

- Some behavior may violate school policies but NOT the law
- School must have an independent investigation process regardless of criminal investigation
- Person reporting may pursue both at the same time, one at a time, neither

# Clery Act

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- **APPLIES** to schools receiving federal funding
- **REQUIRES** schools to:
  - ▣ Collect & publish campus crime statistics
  - ▣ Publish policy statements in Annual Security Report
  - ▣ Issue Emergency Notifications & Timely Warnings to campus community in particular circumstances
- **PURPOSE** is to provide students, families, & employees with accurate, complete, & timely information about campus safety

# Campus SaVE Act

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- Makes requirements of much of TIX *guidance* for school response policies & procedures
- Codifies
  - ▣ Right to an advisor of choice for each party
  - ▣ Written notification to victims of their rights
  - ▣ Address victim confidentiality protections
  - ▣ Identify range of sanctions for four

# TIX Coordinator

- Neutral
- Oversight of investigation
- Make threshold assessment
- Ensure complaint resolution process through appeal is compliant
- Oversight of interim measures (e.g. safety, housing academics, employment)
- Connect impacted individuals to resources
- Respond to patterns, trends & climate

# Key Players

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- Title IX Coordinator/Investigator
- Administrator managing conduct process
- General Counsel
- Campus law enforcement
- Local law enforcement
- Prosecutor's Office
- Respondent advisor of choice
- Complainant advisor of choice
- On-campus advocate
- Community-based advocate



# Key TIX Requirements

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- ❑ Disseminate nondiscrimination notice
- ❑ Designate at least 1 employee to coordinate TIX compliance
- ❑ Adopt & publish grievance procedures providing for prompt & equitable resolution of complaints
- ❑ Train Responsible Employees on reporting duties

# Key Complaint Resolution Process Requirements

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- Prompt- 60 day timeline
- Equitable
- Adequate, reliable, impartial investigation
- No conflicts for investigators & decision-makers
- All involved must be adequately trained
- **Trauma-informed**



# What Should Training Entail?

- Equitable content
- Questioning skills
- Weighing different types of evidence (e.g. direct, circumstantial, inferential)
- Applying policy to fact
- Elemental analysis
- Applying preponderance of evidence
- Assessing credibility, motive, inconsistencies, consent, intoxication, capacity
- Mock hearing
- Training facilitated by neutral parties?

# Key Process Requirements

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- Preponderance of the evidence standard
- Question to be answered: is there sufficient evidence to conclude that it is more likely than not that the respondent violated the policy?
- Equal opportunity for parties to present relevant witnesses & evidence
- Similar & timely access to any info to be used at hearing

# Key Rights of Complainant

- No mediation for sexual assault
- Preponderance of evidence applied
- Right to advisor of choice (including lawyer)
- Right to not be questioned directly by the respondent
- No prior sexual history with anyone other than respondent
- Right to be notified of outcome
- Nondisclosure agreements prohibited

# Key Rights of Respondent

- Many shared with complainant (i.e. preponderance of evidence standard, right to advisor of choice, right to present witnesses)
- Due process (public)/fairness (private)
  - ▣ Notice + opportunity to be heard



# Moving the Needle

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- Shared philosophy/approach?
  - ▣ Understanding unique position of GBV culturally/socially
  - ▣ Compliance v. culture change
  - ▣ Orientation/grounding
  - ▣ Transparency
  - ▣ Bigger/broader than schools
    - Community collaboration

# Dynamics

- Most perpetrated by someone victim knows who uses relationship, trust, rapport to:
  - ▣ Perpetrate
  - ▣ Keep victim from reporting
  - ▣ Avoid accountability
- First response: investigate the reporting person
- Social stigma
- Narrow inaccurate perception of what

# Spotlight on the Spotlight

- Higher scrutiny = higher standards = better for all
- AND important to consider:
  - Why now?
  - Why on just this issue?

# Community Partnership & Collaboration

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- Cincinnati Task Force
  - Genesis
  - Mission
    - Holistic support for survivors of GBV in education settings
    - Reduce perpetration & increase reports
  - Challenges & opportunities



Questions?