Housekeeping

- Virtual Environment
- Not Legal Advice
- Course Materials
- Breaks
- Interactive
Agenda

Session 1: Overview & Relevant Laws

Session 2: Bias Training

Session 3: Tabletop Exercises - Collaboration
Session 1:
Overview and Relevant Laws
YOUR EEO & CIVIL RIGHTS POLICY

Title VII
Title VI
Title IX
ADA
ADEA
Age Discrimination in Employment Act (ADEA)

Age discrimination involves treating an applicant or employee less favorably because of his or her age.

The ADEA protects people who are age 40 or older against discrimination.
Title VI of the 1964 Civil Rights Act says, "No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

42 U.S.C.§2000d
What Activities are Protected Under Title VI?

Programs and activities that receive education funds must operate in a non-discriminatory manner which include:

- admissions
- recruitment
- financial aid
- academic programs
- counseling and guidance
- vocational education
- student treatment and services
Protected Activities Continued...

- Discipline
- Classroom assignment
- Grading
- Recreation
- Physical education
- Athletics
- Housing
EXAMPLES OF TITLE VI CASES

Colorado School District - students filed a claim alleging discrimination due to National Origin for failing to provide adequate language services to all English Learner students.

USC Investigation - A Jewish faculty member alleges the college failed to protect her from discrimination and harassment because of her support for Israel. The former employee filed a Title VI complaint and the Office for Civil Rights initiated an investigation.

Pfizer - "Pfizer is being sued for racial discrimination under Title VI for a federally funded fellowship program that "categorically excludes white and Asian-American applicants."

Students for Fair Admissions v. President and Fellows of Harvard College - At the end of this month, the Supreme Court will hear opening arguments on affirmative action. A similar case at UNC will also be heard before the Court.
Understanding Title VII

Enforced by EEOC

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Title VII Prohibits Employment Discrimination based on:

- Sex
- Race
- Color
- National Origin
- Immigration Status
- Veteran Status
- Religion
- Age
- Pregnancy
- Sexual Orientation
- Gender Identity
- Mental or Physical Disability
Who is covered by Title VII of the Civil Rights Act?

- Private & public sector employers w/15 or more workers
- State and local governmental agencies
- Employment agencies
- Apprenticeship programs

Not Covered: Federal employees or independent contractors. However, federal employees are protected against discrimination by other federal anti-discrimination laws.
What Individuals are Protected from Discrimination Under Title VII?

Applicants
Employees
Former Employees

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Title VII Cases:

Bostock v. Clayton County - Supreme Ct case - Gender identity included under Title VII - Whether the policy was violated depended entirely on sex of the employee. It is this reliance on sex in the employer’s decision-making that raises issues under Title VII.

State of Texas v. EEOC (2022) - Federal court held that EEOC's guidance on "sex-based" bathroom policies was unlawful. The court held that Bostock does not address whether specific conduct relating to SOGI is protected under Title VII, rather the fact that SOGI are protected statuses under Title VII.
Ralph is a white male and an employee of ICS University. He works in the admissions office. Ralph's supervisor is Ian, a black male. Ralph reports to HR that Ian is discriminating against him because he is white. Does this fall under Title VII?
What is the difference between Title VI & Title VII?
Understanding Title IX
Enforced by Office for Civil Rights
Understanding Discrimination Under 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.”
What Does Title IX Cover?

Enforced by Office for Civil Rights

SEXUAL HARASSMENT
EQUITY IN PROGRAMMING (INCLUDING ATHLETICS)
PREGNANCY DISCRIMINATION
Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - 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," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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Other Conduct Covered Under Title IX

**Sexual Assault**
- Fondling
- Incest
- Rape
- Statutory Rape

**Stalking**
Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- fear for the person's safety or safety of others **OR**
- suffer substantial emotional distress
Other Conduct Covered Under Title IX

**Dating Violence**
Violence Committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Several factors used to determine such relationship including:
- length
- type
- frequency of interaction between the parties

**Domestic Violence**
A felony or misdemeanor crime of violence committed by a:
- current or former spouse or intimate partner of the victim
- person with whom the victim shares a child in common
- person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
TITLE IX TEAM

Title IX Coordinator

Responsible Employees/Officials w/Authority

Advisors

Investigator(s)

Decision-Maker(s)

Appellate Decision-Maker(s)

Informal Resolution Facilitator(s)

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**INVESTIGATOR**
Cannot serve as the Decision-Maker or Appellate Decision-Maker. May be the Title IX Coordinator but if possible, it is recommended that this individual be separate from the Title IX Coordinator. It is not recommended that an Investigator serve as the Informal Resolution facilitator in a case that they have started, or later serve, as an Investigator.

**TITLE IX TEAM**

**TITLE IX COORDINATOR**
Cannot serve as the Decision-Maker or Appellate Decision-Maker. May serve as an Investigator-though if possible, it is recommended that another individual serve as an Investigator.

**APPELLATE DECISION MAKER**
Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an Appellate Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as an Appellate Decision-Maker.

**DECISION MAKER**
Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Appellate Decision-Maker. It is not recommended that a Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as a Decision-Maker.

**INFORMAL RESOLUTION FACILITATOR**
Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an Appellate Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as an Appellate Decision-Maker.

May be the Title IX Coordinator. It is not recommended that an individual who has or will serve as an Investigator, Decision-Maker or Appellate Decision-Maker in the same case serve as the Informal Resolution Facilitator.

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OCR Resolution Agreement with College. No interactive process and encouraged her to withdraw.
Pregnancy Discrimination

Pregnancy + Related Conditions
Title IX Prohibits students and employees from discrimination based on:

- Pregnancy
- False Pregnancy
- Childbirth
- Termination of Pregnancy
- OR recovery therefrom.

REMEMBER
- Must be treated the same as any other temporary disability
- Must be reinstated to the status held when individual began their leave

RECENT UPDATES
- New OCR Resource on Pregnancy Discrimination
- Proposed Rules on Pregnancy Discrimination
- Lingering Questions Post Bostock

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Pregnancy Accommodations

Must provide the following for students:

- Leave for as long as physician deems medically necessary
- After leave, student must be reinstated to status the student held when leave began

Must provide the following for employees:

- Leave of absence without pay for a reasonable period of time
- After leave, reinstated to pre-leave status or comparable position (without reduction of compensation or loss of promotional opportunities or any other employment rights or privileges)
Professor is denied tenure due to pregnancy leave. She files a claim for pregnancy and gender discrimination.

**Title IX**
- Pregnancy discrimination
- Gender discrimination
- Evaluate individual claim of discrimination
- Federal Funding is at risk.
- Can file law suit immediately.

**Title VII**
- Equal Pay
- Pregnancy discrimination
- Gender discrimination
- May want to investigate disparate impact/hiring practices.
- Compensatory damages and pain and suffering.
- Must exhaust administrative remedies.
Title IX/Title VII Sexual Harassment

Severe- can be non verbal through sexual assault (touching/fondling)
Pervasive- how often and how widespread
Objectively Offensive- behavior that would be offensive to a reasonable person under the circumstances

SEVERE, OR
PERVASIVE

SEVERE, AND
PERVASIVE, AND
OBJECTIVELY
OFFENSIVE
ADA
AMERICANS WITH DISABILITIES ACT
The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination solely on the basis of disability in employment, public services, and accommodations. The person must otherwise be qualified for the program, service or job.
The ADA requires the provision of reasonable effective accommodations for eligible faculty, staff, students, and visitors across an institution's programs, activities, and services.

Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits any school district receiving federal financial assistance from discriminating against disabled children.

Title II

Title II of the Americans with Disabilities Act of 1990 expands these protections and prohibits all school districts, whether they receive federal funding or not, from discriminating against disabled children.
The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity.

- Walking
- Talking
- Thinking
- Speaking
- Breathing
- Hearing
One aim of the ADA was to make educational institutions more accessible for the disabled. This aim covers “reasonable accommodations” such as the following:

- Modification of application and testing
- Allowing students to tape-record or videotape lectures and classes
- Modification of class schedules
- Extra time allotted between classes
- Notetakers
- Interpreters
- Readers
- Specialized computer equipment
- Special education
The accommodation also includes physical changes to an educational institution’s buildings, including the following:

- Installing accessible doorknobs and hardware
- Installing grab bars in bathrooms
- Increasing maneuverability in bathrooms for wheelchairs
- Creating handicapped parking spaces
- Installing accessible water fountains
- Installing ramps

Undue Hardship?
INTERACTIVE PROCESS UNDER ADA

REPORT OF A DISABILITY THAT IMPACTS ABILITY TO PERFORM JOB

MEETING WITH HR TO CONDUCT INITIAL ASSESSMENT

IS REQUEST REASONABLE?

NEED FOR BRAINSTORMING ALTERNATIVE ACCOMMODATIONS

IMPLEMENT ACCOMMODATION, IF REASONABLE

CONTINUE INTERACTIVE PROCESS UNTIL EXHAUSTED OPTIONS

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Don't Forget!

State Laws!
Session 2:
BIAS TRAINING
• Suspend your mind...
• No pre-judgment
• Check for conflicts
• Check your biases
Actual v. Perceived conflict of INTERESTS
Bias – Cause to feel or show inclination or judgement for or against someone or something
Subjective/Objective/Perception of Bias or Conflict

Examples:
- Frequent flyers
- President of the SGA
- Basketball Star
Biases

Affinity Bias - Unconscious bias that causes people to gravitate towards others who appear to be like them

Confirmation Bias - Overly confident in own intelligence, experience or opinions

Overconfidence Bias - Listening to or respect data information that aligns with our viewpoints

Unconscious bias that causes people to gravitate towards others who appear to be like them

Affinity Bias - Overly confident in own intelligence, experience or opinions

Cognitive bias that causes our negative impression of someone or something in one area to change our impression of them in other areas

Halo Bias - Cognitive bias that claims that positive impressions of people, brands, and products in one area positively influence our feelings in another area

Horn Bias - Overly confident in own intelligence, experience or opinions

Anchoring Bias - Being overly influenced by the first piece of information we receive

Cognitive bias that causes our negative impression of someone or something in one area to change our impression of them in other areas
Defaulting to Bias in Decision Making is Enhanced When:

- The basis for judgment is ambiguous.
- Rushed decisions b/c of time constraints.
- We are in a heightened emotional state.
- There is no accountability for our decision making.
Bias Impacts Investigations

- In types of questions
- In granting extensions or setting deadlines
- In drafting a report
Your identity informs how you see the world and how the world sees you.

Your views are informed by your lived experiences.

We are also shaped by our environments.

All humans have bias.
How Do We Mitigate Conflict of Interest and Bias?
Reducing Bias in Investigations and Decision Making

1. Was there equity during process?
2. Were questions fair to all parties?
3. Was information written in an unbiased manner?
4. Did you weigh information objectively?
Reducing Bias in Sanctioning

- One size fits all approach to sanctioning?
- Can you articulate how the action taken is reasonably calculated to end the harassment?
- Can you articulate how the action taken is reasonably calculated to prevent the recurrence?

Remedies: Intended to restore or preserve equal access
We must maintain a commitment to impartiality at every point.
Session 3:
When Roads Collide – Table Top Exercise
Learning to Merge

Title IX
Title VII
Title VI
ADA
Triaging a Report of Discrimination

Report

Title IX
Discrimination (non harassment)

Non Title IX

Referral

Response

Process?

Title IX Sexual Harassment

Formal Complaint

No Formal Complaint

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Lifecycle of a Report

1. **Intake**
   - Title IX Sexual Harassment

2. **Triage**
   - Initiate Formal Grievance Process
   - Protected Class
   - Policy Driven

3. **Investigation**

4. **Resolution**

5. **Appeals**
Ultimately Pathway is dictated by Policy, and Policy is impacted by Law
Who's On First?

- Compliance
- Equity Office
- Safety
- HR
STAY IN YOUR LANE AND KNOW YOUR ROLE

Are you a fact gatherer?
Are you investigating and making a recommendation/determination?
Make sure you have the right type of curiosity...
Are you inquisitive or just nosy?
DO NOT INVESTIGATE

IF YOUR ROLE IS NOT TO INVESTIGATE - Your GOAL is to CONNECT to appropriate resources!
Supportive Measures

- Counseling
- No Contact Directive
- Safety planning
- Class change
- Incomplete/Additional time to complete assignments
- Housing relocation
- Etc.
PARALLEL INVESTIGATIONS

- EEOC/Criminal
- School Investigation
Michelle is a Freshman at ICS University and tells her counselor at the health center that she was raped at a party one weekend in the athletic dorm by a Football player.

- Does the counselor have a duty to report this allegation?

Craig is a football player who is in the locker room and overhears Sam talking about having sex with Michelle during a party when she was so drunk. Craig tells his RA about the conversation regarding Michelle.

- Does the RA have a duty to report this allegation?
Five students attended a study abroad program in Italy for 6 weeks. During their trip, the students alleged that Professor Gray made numerous lewd remarks about their bodies and even hugged several of them inappropriately (without their consent). Assistant Professor Plum remembered his Title IX training and immediately reached out to the Title IX coordinator when he returned.

- What should the Title IX Coordinator do?
- Who else should be notified?
When a Report Is Made

1. Complaint Intake - Know Your Policy
2. Which Policy Has Been Violated?
3. Who's on First?
4. Coordination of Remedies
5. Investigate
6. Supportive Measure May Be Different
7. Delineation of Duties

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Supportive Measures

- Counseling
- No Contact Directive
- Safety planning
- Class change
- Incomplete/Additional time to complete assignments
- Housing relocation
- Etc.
Don't forget your soft skills throughout
QUESTIONS?