Astrid and Jan are university students. They engage in sexual activity at an off-campus apartment. Astrid files a Title IX complaint.

Dismiss because this conduct occurred off-campus.

Dismiss if the university does not exercise control over this off-campus apartment.

Dismiss because the university does not exercise control over respondent.

Dismiss if the Title IX Coordinator believes the activity was consensual.

None of the above.
Astrid and Jan are university students. They engage in sexual activity at a house leased by an officially-recognized organization. Astrid files a Title IX complaint.

Dismiss because the house is off-campus

Dismiss because the organization is not within the university’s program or activity

Investigate because the house is leased by an officially-recognized organization

Investigate because Title IX applies to persons, not places

None of the above
An institution may be liable for incidents occurring on campus, as well as off school grounds IF “the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs.”


Institution has a duty to prevent and address discrimination through all of its operations, “whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.”
• **Only** within the United States
  • On-campus, or
  • Off-campus, only if
    • It occurred as part of the institution’s “operations”; or
    • Institution exercised **substantial control** over the respondent & the context of the conduct; or
    • It occurred at an off-campus building owned or controlled by a **student organization** recognized by the institution.

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Astrid and Jan are university students. They engage in sexual activity off-campus. Jan emails graphic videos of this activity to their friends using their campus email. **Astrid files a Title IX complaint**

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- Dismiss because the sexual activity occurred off-campus
- Dismiss because the videos were created off-campus
- Investigate because distributing graphic videos will always constitute Title IX sexual harassment
- Investigate because the videos were distributed through campus software and may constitute Title IX sexual harassment
- None of the above
Astrid is sexually harassed at the off-campus "swim house," which is not actually leased by the Swim team but houses several members of the team each year. Astrid files a Title IX complaint.

Always dismiss because the swim house is not leased by an officially-recognized organization.
Always investigate because the Swim Team is an officially-recognized team.
Possibly dismiss if the university does not exercise substantial control over the swim house.
Possibly investigate if the harassment is severe, pervasive, or objectively offensive.

None of the above

• This need not map on to Clery geography designations!

• Conduct that begins off-campus and moves on-campus:
  • Campus could investigate off-campus and on-campus incidents through separate processes (TIX vs Code)
  • It may be more prudent to consolidate misconduct under the Title IX process.
TITLE IX FINAL RULES: ONLINE HARASSMENT

Possibly covered where network, software, or hardware is part of the institution's “operations” and institution has substantial control over the context where it occurs
• Personal device during class
• Blackboard chats

TITLE IX FINAL RULES: STUDENT ORGANIZATIONS

• **Bright Line Rule:** for officially recognized institutions, there will be Title IX jurisdiction even if the building is off-campus. See, 85 Fed. Reg. 30026, 30197 (May 19, 2020)

• Even if the event occurs in a place not owned or rented by the organization, any misconduct occurring in that location could fall under the institution’s jurisdiction if it involves members of that affiliated organization.
• Title IX:
  • Obligation to investigate could be triggered by anyone: students, faculty, staff, and third parties
  • Jurisdiction over both parties was not required for obligations to kick in.

• Education Law 129-B: Same
Who can file a formal complaint?
• A person who is **currently participating** in the education programs or activities of the institution
• A person who is **attempting** to participate in those programs or activities
• The Title IX Coordinator

Who can be a respondent?
• Institutions **may** dismiss complaints if Respondent is not enrolled/employed by the institution

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**Astrid lives in on-campus housing but is not taking courses. They file a Title IX complaint based on an on-campus sexual assault.**

Dismiss because they are not pursuing a degree.
Dismiss because they are not participating in your program or activity.
Investigate because they live on-campus and the misconduct allegedly occurred on-campus.
Investigate because they might take classes next semester.
None of the above
Astrid is a recent graduate. They are sexually harassed while attending the Alumni Bowl. Astrid files a Title IX complaint.

- Dismiss because the Alumni Bowl was held off-campus.
- Dismiss because Astrid is not a current student.
- Investigate because Astrid is seeking to participate in a program or activity.
- Investigate because alumni always fall within the scope of Title IX.
- None of the above

Any member of the public might have a claim if they could show that they “are either taking part or trying to take part of a funding recipient institution’s educational program or activity.” Doe v. Brown University, 896 F.3d 127, 132 n.6 (1st Cir. 2018)

Examples? Accessing (or trying to use) college resources, such as its libraries, computer labs, vocational resources, campus tours, public lectures, sporting events, and other activities.

See, also, Doe v. Univ. of Kentucky, 971 F.3d 553 (6th Cir. 2020)
<table>
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<td>Consider: Respondents who are not students or employees</td>
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Our duty here is to *not be deliberately indifferent* in deciding whether *something* is covered or not covered.

- Use good faith
- Use your best judgment
- Clearly document your reasoning

**IN SUMMARY**
THANK YOU!