



# TITLE IX COORDINATOR TRAINING

**Day 1**



# I N T R O S



**ANDREW STAMMEL**  
Associate Counsel  
Student Affairs Practice Group  
SUNY Office of General Counsel



**KERIANNE SILVER**  
Director  
SUNY Student Conduct Institute

# DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.





# DAY 1 AGENDA

## TITLE IX OVERVIEW

- Statutory language & implementing regulations
- Misc: Athletics, pregnancy, & parenting
- Title IX history

## TITLE IX 2020 FINAL RULE

- Scope & jurisdiction
- Definitions
- Due process
- Other federal laws

## NEW YORK STATE LAW

- 129-B Enough is Enough
- GENDA & SONDA





# TITLE IX OVERVIEW & KEY CONCEPTS



# TITLE IX: HISTORICAL CONTEXT

“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 of activity receiving Federal financial assistance ...”





# TITLE IX: APPLICATION

**RECIPIENT:** Any entity which operates an education program or activity & receives federal funding

**PROGRAM OR ACTIVITY:** All operations of the college or university

# “EDUCATION PROGRAM OR ACTIVITY” INCLUDES ...

## ACCESS TO COMPORABLE CLASSES & FACILITIES

- Counseling & guidance
- Employment
- Discrimination in admissions & recruitment
- Provide different aid, benefits, or services, or provide aid, benefits, or services in a different manner
- Health insurance
- Deny any person any such aid, benefits, or service





# EXCEPTIONS TO TITLE IX APPLICATIONS (SEPARATION IS PERMITTED HERE)



- Social Fraternity & Sorority Admission (Sec. 106.14)
- Separate but comparable housing, toilet, locker room, & shower facilities by sex. (Sec. 106.32-106.33)
- Contact sports & ability grouping in physical education classes (106.34)
- Separate Athletics teams where selection is based on competitive skill, or the activity is a contact sport (106.41)
- Human Sexuality Classes (106.34)
- Choruses (106.34)



# ATHLETICS

Non-Discrimination

Scholarship Opportunities

Equal Opportunity in Athletics

- Accommodate interests & abilities of both sexes;
- Equipment & supplies;
- Scheduling;
- Travel & per diem;
- Coaching & tutoring;
- Compensation of coaches;
- Locker rooms, practice, & competition facilities;
- Medical & training facilities;
- Housing & dining facilities;
- Publicity

# MARITAL OR PARENTAL STATUS

- Admissions: pre-admission inquiries
- Equal Treatment: concerning parental, family, or marital status may treat students differently by sex.
- Discrimination: because of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom
- Physician Certification
- Separate sections
- Leave
- Employment Actions
- Employee pregnancy





## COMPLAINT PROCEDURES

- Adopt & publish a Notice of Non-Discrimination & grievance procedures for prompt & equitable resolution of student & employee complaints alleging any action prohibited by Title IX.



## DESIGNATION OF RESPONSIBLE EMPLOYEE (TIXC)

- Designate at least one employee to coordinate its efforts to comply with & carry out its responsibilities under Title IX (TIXC)
- Includes investigation of any complaint alleging any actions which would be prohibited by Title IX.

# TITLE IX COORDINATOR DUTIES:

- Disseminate & implement policies;
- Provide training;
- Receive & handle complaints;
- Oversee an investigation;
- Maintain records;
- Identify trends & areas for improvement;
- Advise on Title IX issues;
- Work with stakeholders across campus.





# TITLE IX TIMELINE: 1970'S-1990'S

**1972**

Title IX Adopted-  
focus on Athletics &  
expanding  
opportunity

**1978**

Alexander v. Yale

**1999**

Sexual  
Harassment  
Liability

- Davis v. Monroe  
County  
Board of  
Education

**1975**

Rules implement  
Title IX & schools  
have until 1978 to  
comply

**1992**

Sexual Harassment Liability

- Franklin v. Gwinnett  
County Public Schools



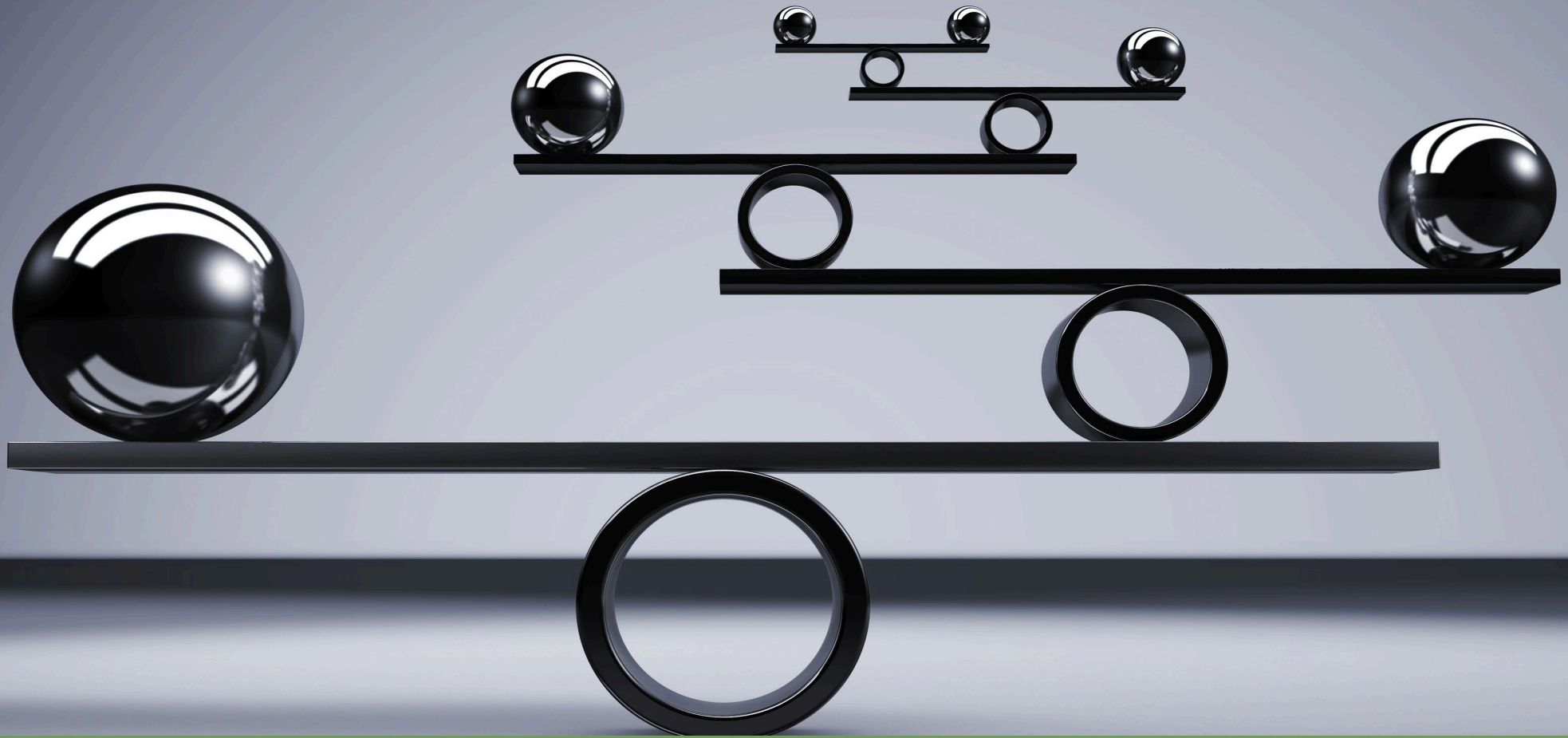
The State University  
of New York

# TITLE IX: HISTORICAL CONTEXT



## TITLE IX TIMELINE: 2011-PRESENT

- April 2011: Obama's Dear Colleague Letter
- May 2020: Title IX Final Rule
- 2016-2026: Shifting Policies Related to Transgender Students
- August 2024: Biden-era 2024 Final Rule Implemented
- January 2025: Biden-era 2024 Rule is Vacated- return to 2020



# 2020 FINAL RULE

*Introduction to the Title IX Final Rule*

# SCOPE OF FINAL RULE

Sexual harassment in an education program or activity of the institution against a person in the United States.





# SEXUAL HARASSMENT

Sex-based harassment prohibited by this part (Title IX) is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in the scope, that is:

1

**QUID PRO QUO  
HARASSMENT**

2

**HOSTILE  
ENVIRONMENT  
HARASSMENT**

3

**SPECIFIC  
OFFENSES**



# QUID PRO QUO

“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”



# QUID PRO QUO HARASSMENT

## EMPLOYEES OF THE INSTITUTION

This categorization includes, but is not limited to:

- Faculty (full-time & adjunct),
- Administrators,
- Practitioners,
- Coaches,
- Members of institutional leadership (if considered to provide aid, benefit, or service)

## ARE STUDENTS INCLUDED IN THE CATEGORY OF QUID PRO QUO HARASSMENT?

- Generally, no. Students are intended as the beneficiaries of the aid, benefits, or services of the institution's education program or activity.



# HOSTILE ENVIRONMENT

## SEVERE AND PERVASIVE

- A single serious incident may be severe but not pervasive, as required.
- Pervasive conduct may create a hostile environment, even if no single occurrence of conduct is severe.
  - Harassment in hallways
  - Graffiti in public areas
  - Harassment during extracurricular education programs or activities.

## SUBJECTIVELY AND OBJECTIVELY OFFENSIVE

- Subjective offensiveness of sex-based harassment is necessary to determine hostile environment.
  - Must be supported by evidence
  - Cannot prove hostile environment on its own.
- Objective offensiveness is assessed through the perspective of a reasonable person in the complainant's position.

# HOSTILE ENVIRONMENT HARASSMENT: TOTALITY OF THE CIRCUMSTANCES

When a standard is based on the “**totality of the circumstances,**” it means that a determination must be made in consideration of all the facts & all the available information.

Requires consideration of all relevant evidence & the five factors of the fact-specific inquiry.





***“EFFECTIVELY  
DENIES”* HOSTILE  
ENVIRONMENT  
HARASSMENT**

Evidence required to support complainant’s claim that ability to participate in or benefit from education program or activity is “effectively denied” because of alleged conduct.

No specific type of harm required for a hostile environment to exist.

Whether alleged conduct effectively denies a person equal access to an institution’s education program or activity is fact-specific analysis & requires consideration of all relevant evidence.

# ***FACT SPECIFIC INQUIRY:*** **CONSIDERATION FACTORS**

Whether a hostile environment has been created is a **fact-specific inquiry** that includes consideration of the following **five factors**:

## **FACTOR 1**

The degree to which the conduct affected the complainant's ability to access the institution's education program or activity

## **FACTOR 2**

The type, frequency, & duration of the conduct

## **FACTOR 3**

The parties' ages, roles within the institution's education program or activity, previous interactions, & other factors about each party that may be relevant to evaluating the effects of the conduct

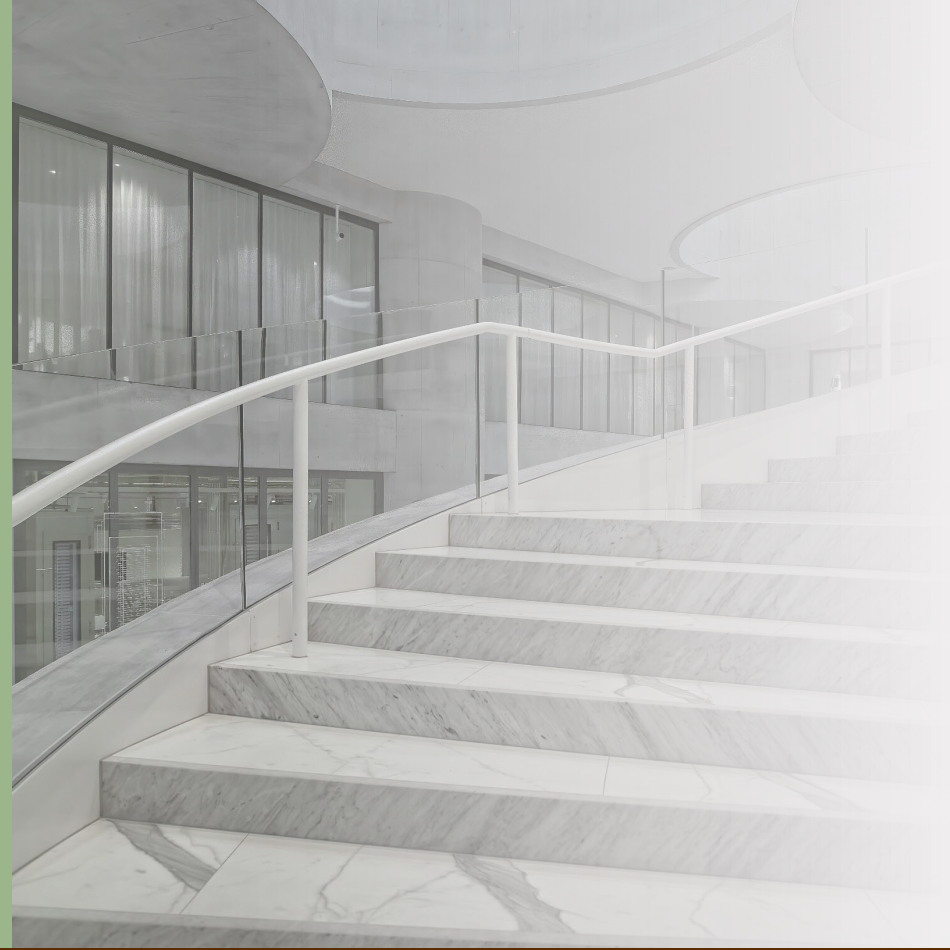
# ***FACT SPECIFIC INQUIRY:*** **CONSIDERATION FACTORS, cont.**

## **FACTOR 4**

The location of the conduct & the context in which the conduct occurred

## **FACTOR 5**

Other sexual harassment in the institution's education program or activity



# SPECIFIC OFFENSES

- 1. SEXUAL ASSAULT**
- 2. DATING VIOLENCE**
- 3. DOMESTIC VIOLENCE**
- 4. STALKING**

- The Department crafted definition of sex-based harassment & definitions of the four included specific offenses to align with the Clery Act.
- Do not need to be severe or pervasive or subjectively & objectively offensive to constitute sex-based harassment.
- Do not have to satisfy the element of unwelcomeness.
- A hostile environment may need to be addressed even if a specific offense occurs outside of an education program or activity.
- Other sex offenses as defined by State law may meet the definition of hostile environment harassment if they satisfy all elements of the definition.

# 1. SEXUAL ASSAULT

“An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting (UCR) system of the Federal Bureau of Investigation (FBI).” 20 U.S.C. 1092(f)(6)(A)(v)

Offenses included:

- Rape
- Criminal Sexual Contact
- Incest
- Statutory Rape

HOW DOES YOUR STATE DEFINE  
CONSENT?



## 2. DATING VIOLENCE

VIOLENCE COMMITTED BY A PERSON:

- a. Who is or has been in a social relationship of romantic or intimate nature with the victim; **AND**
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; &
  - The frequency of interaction between the persons involved in the relationship.

# 3. DOMESTIC VIOLENCE

## FELONY OR MISDEMEANOR CRIMES OF VIOLENCE COMMITTED BY

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by 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.

## 4. STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.

### CONSIDERATION FACTORS OF CONDUCT:

- Duration
- Frequency
- Intensity

TACTICS USED MAY INCLUDE BUT ARE NOT LIMITED TO:

- Watching
- Following
- Using a tracking device
- Monitoring online activity
- Unwanted contact
- Property invasion or damage
- Hacking accounts
- Threats
- Violence
- Sabotage
- Attacks

# TIME FOR AN ATTENDANCE CHECK

1. If you are brought to a login page, please sign into your SUNY SCI account using the **local login function**, this should bring you to the attendance check page where you can begin the quiz.
2. Complete the attendance check survey in the **same browser** in which you are accessing this Zoom call.
3. Log into your **SUNY SCI Dashboard**, scroll down to the **My Courses** section, select today's L@D course and choose the **Attendance Checks** module where you can complete the check. 😊
4. If you experience issues, please direct message @StudentConductInstitute in the Zoom chat or email [STUDENTCONDUCTINSTITUTE@SUNY.EDU](mailto:STUDENTCONDUCTINSTITUTE@SUNY.EDU).

**ATTENDANCE QUIZ APPEARS DURING THE TRAINING BREAK FOR A LIMITED TIME.  
PLEASE TAKE THE QUIZ IMMEDIATELY ONCE IT IS POSTED IN THE CHAT.**



**JURISDICTION**



# DEFINING EDUCATION PROGRAM AND/OR ACTIVITY

All operations of:

- A college, university or other postsecondary institution, or public system of higher education....

# “SUBSTANTIAL CONTROL”

An institution is not responsible for the actions of parties over which it lacks substantial control and are only responsible for alleged discriminatory conduct over both the context and the respondent.





# OUTSIDE THE COUNTRY

“NO PERSON *IN THE UNITED STATES* SHALL...”

- Title IX does **not** apply outside of the United States
- Plain language of the statute is clear that Congress did not intend for application outside of the U.S.
- Title IX does **not** apply to study abroad programs and institutions do not have an obligation to address sex discrimination outside of the U.S.

**HOWEVER, the 2024 Final Rule further states:**

- Institutions *do* have a responsibility to address a hostile environment in its education program or activity in the U.S., even when some conduct alleged to be contributing to the hostile environment occurred outside of the institution’s program or activity or outside of the U.S. (including study abroad).
- Also, institutions may respond under their codes of conduct or other applicable policies pertaining to study abroad.



# DUE PROCESS

# THE CONSTITUTION & DUE PROCESS

No state shall “deprive any person of life, liberty, or property, without due process of law.”

14<sup>th</sup> Amendment, Section 1, U.S. Constitution





# THE CONSTITUTION: A FOUNDATION FOR DUE PROCESS

The U.S. Constitution sets the legal foundation for due process requirements. Statutes embodying Federal & State laws, rules, and regulations must build upon the due process foundation set by the Constitution.

## THE U.S. CONSTITUTION

- Prohibits the deprivation of life, liberty, & property.
- Prohibits the denial to any person of the equal protection of law.

## STATUTES

- Laws passed by Congress or a State Legislature.
- Must be followed by institutions receiving federal funding.

## RULES & REGULATIONS

- Issued by government agencies to further interpret & explain the law.
- Do not have the force of law but provide insight for enforcement & best practices.

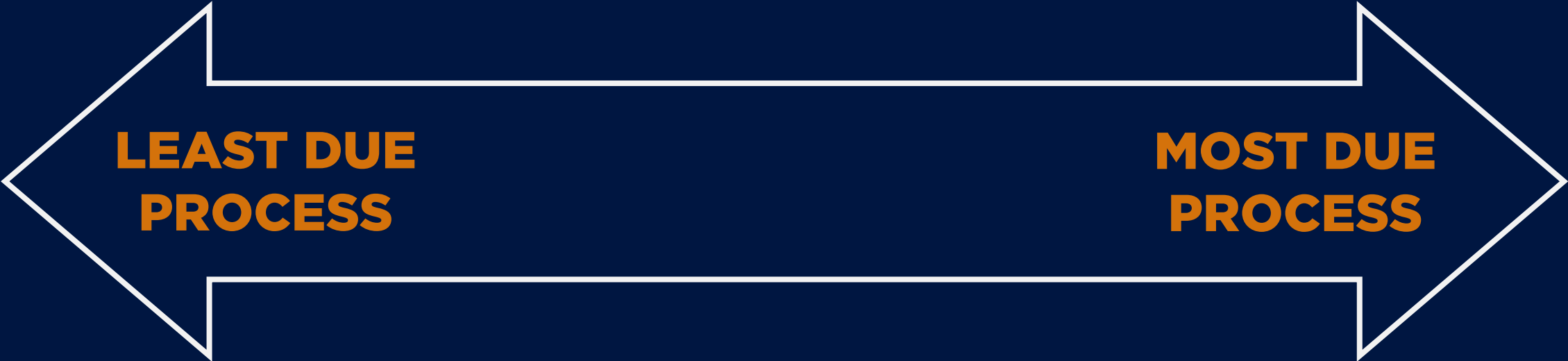
# ***DUE PROCESS: YOUR POLICIES ARE YOUR CONSTITUTION***



**ALWAYS START  
WITH YOUR TITLE IX  
POLICY & YOUR  
STUDENT CODE OF  
CONDUCT!**



# **DUE PROCESS: WHEN & HOW MUCH?**



**WARNING**

**EXPULSION**



# OTHER RELEVANT LAWS: CLERY

## THE CLERY ACT

- Administrative law focused on ensuring that certain policies & procedures are in place that prevent and respond to instances of domestic violence, dating violence, sexual assault, or stalking (DVSAS).
- Federal consumer protection law that aims to provide transparency around campus crime policy & statistics by imposing certain recording and reporting requirements.
- Applies just to higher education institutions.
- Includes the reporting other crime offenses outside of DVSAS (hate crimes, arrests, referrals for disciplinary action).
- Jurisdiction based on geography.

## TITLE IX

- Federal law that prohibits discrimination on the basis of sex in education programs and activities.
- Civil rights law designed to preserve one's civil rights & access to federally funded education free from discrimination on the basis of sex.
- Applies to K-12 & higher education institutions.
- Includes responding to complaints of sexual harassment (which may include DVSAS).
- Jurisdiction based on education program or activity and substantial control.



# **SIMILARITIES** between *CLERY & TITLE IX*

## **TRAINING** requirements

Address & share definitions for specific offenses

Domestic violence, dating violence, sexual assault, stalking

Provide support for victims

Clery = accommodations; Title IX = Supportive Measures

Require fair **and** equitable disciplinary processes

# VIOLENCE AGAINST WOMEN ACT (VAWA) AMENDMENTS TO CLERY (2013)

Adds the definitions of specific offenses and includes them as reportable crimes (DVSAS)

- Domestic Violence
- Dating Violence
- Sexual Assault
- Stalking

Policy statement of the jurisdiction covered by campus security

Data regarding DVSAS incidents along with policy statements outlining campus response to these incidents, including rights & options for survivors

Implement programs to prevent DVSAS incidents while promoting a healthy & respectful campus environment

Published reports must respect survivor's confidential information (PII, accommodations, etc).

Report data on hate crimes – VAWA added crimes based on gender identity & national origin to the list of hate crimes that must be reported.



# KNOWLEDGE CHECK



# EMPLOYEES: TITLE IX & TITLE VII

## TITLE IX

- Prohibits discrimination “on the basis of” sex.
- Applies to students, employees, & others participating in or attempting to participate in the education programs or activities.
- Hostile Environment: subjectively & objectively offensive & severe and pervasive
- Actual Notice
- Voluntary

## TITLE VII

- Prohibits discrimination “because of...sex.”
- Also covers race, color, religion, or national origin.
- Applies to employees
- Hostile Environment: severe or pervasive to alter working conditions & create hostile environment
- Knew or should have known
- Compulsory?

*You MUST use your Title IX Grievance Procedure for allegations against employees related to Title IX-covered sexual harassment.*



# **NEW YORK STATE LAW**

***129-B, SONDA, & GENDA***

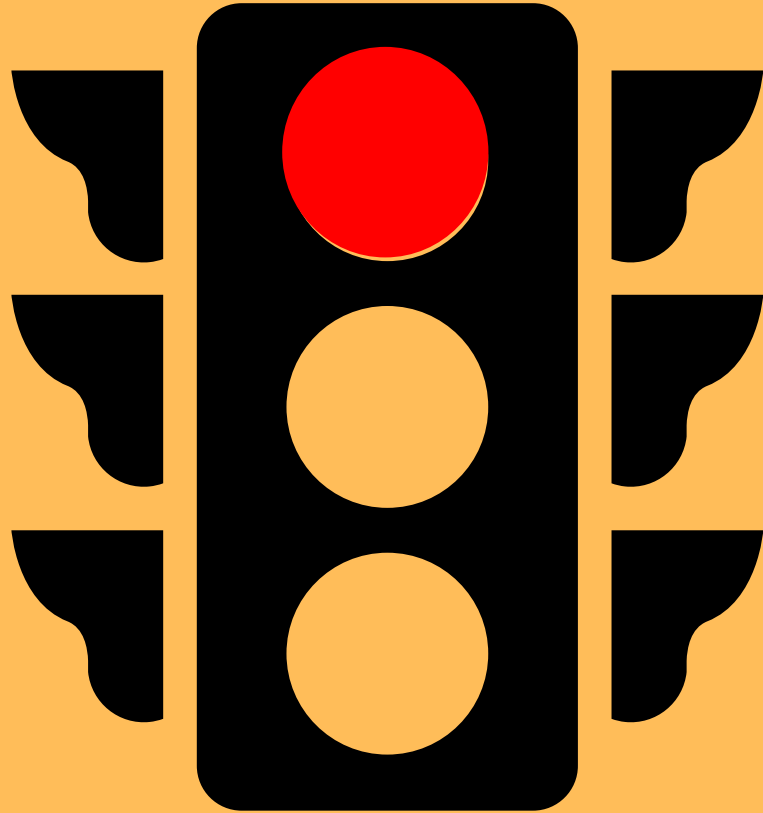




# **129-B OF THE NYS EDUCATION LAW**

## ***“ENOUGH IS ENOUGH”***

- What conduct is covered?
- Who is covered?
- Mandated items?
  - Process
  - Training
  - Surveys & reporting
  - Misc policies: Amnesty, Bill of Rights, Affirmative Consent



- What conduct is covered?
  - Sexual assault, dating violence, domestic violence, & stalking
- Who is covered?
  - Only students
- Geography?
  - Broader than Title IX

# 129-B PROHIBITED CONDUCT



- Make report to local law enforcement
- Have disclosures taken seriously
- Make procedural decisions without institutional pressure
- Fair, impartial process with opportunity to be heard
- Treated with dignity & respect
- No victim blaming
- Describe incident to fewer people
- No retaliation
- Appeals
- Advisor of choice
- Civil rights



# **STUDENTS' BILL OF RIGHTS**

# AFFIRMATIVE CONSENT UNDER 129-B



- Supplements Title IX
- Mandated definition
- For all “sexual activity”
- Affirmative Consent DEFINITION
  - Expressed through words or deeds
  - Always required & may be withdrawn
  - Incapacitation & coercion
- Proving Affirmative Consent



# MANDATORY RESPONSE TO REPORTS

- Advise of rights & resources
- Emergency access to TIXC or another trained official
- Options for confidential & private disclosure
- File reports with TIXC or HR
- Support for legal proceedings
- Right to withdraw complaints



**OTHER  
MEASURES**

**NO-CONTACT  
ORDER**



**ORDER OF  
PROTECTION &  
ARREST**

**PROTECTIONS &  
ACCOMMODATIONS**

**OTHER  
SECURITY OR  
SAFETY  
ASSISTANCE**

**INTERIM  
SUSPENSION**

**ACADEMIC &  
OTHER  
ACCOMMODATIONS**



- Notice to Respondent
- Opportunity to offer & review evidence in impartial investigation
- Appeal
- Advisor of choice
- Prompt, impartial, timely, & thorough adjudication with opportunity to present evidence at hearing
- Concurrent with criminal investigation
- Exclude sexual & criminal history
- Privacy
- Transcript notations



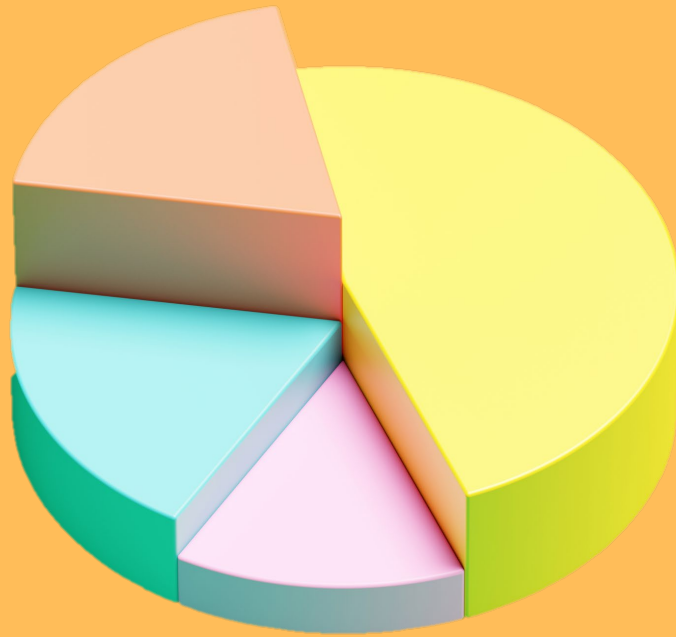
**DUE PROCESS  
RIGHTS**



# ALCOHOL AND/OR DRUG USE AMNESTY

“The health and safety of every student at the [Institution] is of utmost importance ... A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to [Institution’s] officials or law enforcement will not be subject to [Institution’s] code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.”

# MISC 129-B: CLIMATE SURVEYS, REPORTING & TRAINING



- CAMPUS CLIMATE ASSESSMENTS
  - Every other year
  - Questions related to knowledge, experiences, & bystander attitudes
- REPORTING
  - 10 Years: File copies of rule
  - Annual 129-B certification
  - Annual Aggregate Data Report
    - Data about reports, cases, findings, & sanctions
- TRAINING
  - Specific topics: Definitions, role of TIXC, policies, risk reduction, bystander intervention
  - Targeted audiences: new students, student leaders, athletes



# NYS HUMAN RIGHTS LAW

- **NYS EXECUTIVE LAW § 296** - New York State Human Rights Law is broader than federal laws
- In addition to race, color and national origin, NYSHRL includes discrimination based on age, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence.
- Statute of limitations - 3 years



- Sexual orientation discrimination prohibited
  - Employment
  - Housing
  - Public accommodations
  - Education, &
  - The exercise of civil rights
- Gender expression/identity discrimination prohibited
  - Employment
  - Housing
  - Public accommodations
  - And non-religious schools, etc.
- Different standards & requirements than Title IX

# **SONDA & GENDA**



# QUESTIONS?

SUNY.EDU

[system.suny.edu/sci/news](https://system.suny.edu/sci/news)

[SYSTEM.SUNY.EDU/SCI/TIX2020](https://SYSTEM.SUNY.EDU/SCI/TIX2020)

[system.suny.edu/sci/titleix](https://system.suny.edu/sci/titleix)



# TIME FOR AN ATTENDANCE CHECK

1. If you are brought to a login page, please sign into your SUNY SCI account using the **local login function**, this should bring you to the attendance check page where you can begin the quiz.
2. Complete the attendance check survey in the **same browser** in which you are accessing this Zoom call.
3. Log into your **SUNY SCI Dashboard**, scroll down to the **My Courses** section, select today's L@D course and choose the **Attendance Checks** module where you can complete the check. 😊
4. If you experience issues, please direct message @StudentConductInstitute in the Zoom chat or email [STUDENTCONDUCTINSTITUTE@SUNY.EDU](mailto:STUDENTCONDUCTINSTITUTE@SUNY.EDU).

**ATTENDANCE QUIZ APPEARS DURING THE TRAINING BREAK FOR A LIMITED TIME.  
PLEASE TAKE THE QUIZ IMMEDIATELY ONCE IT IS POSTED IN THE CHAT.**