



Association of
Title IX Administrators

Title IX Compliance and Legislation Update

Vassar College

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

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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.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



Franklin v. Gwinnett Public Schools

503 U.S. 60 (1992)

- District and Eleventh Circuit dismissed the case, indicating that Title IX does not allow for award of monetary damages
- Supreme Court held:
 - Sexual harassment constitutes sex discrimination under Title IX
 - Private right for recovery of monetary damages under Title IX
- *Franklin* did not address issues concerning the educational institution's liability

Gebser v. Lago Vista Indep. School

524 U.S. 274 (1998)

The Supreme Court ruled individuals cannot recover monetary damages against the school unless:

- Three-part standard:
 1. An official of the educational institution must have had “**actual notice**” of harassment;
 2. The official must have authority to “**institute corrective measures**” to resolve the harassment problem; **AND**
 3. The official must have “**failed to adequately respond**” to the harassment and, in failing to respond, must have acted with “**deliberate indifference.**”

Davis v. Monroe County Bd. of Ed.

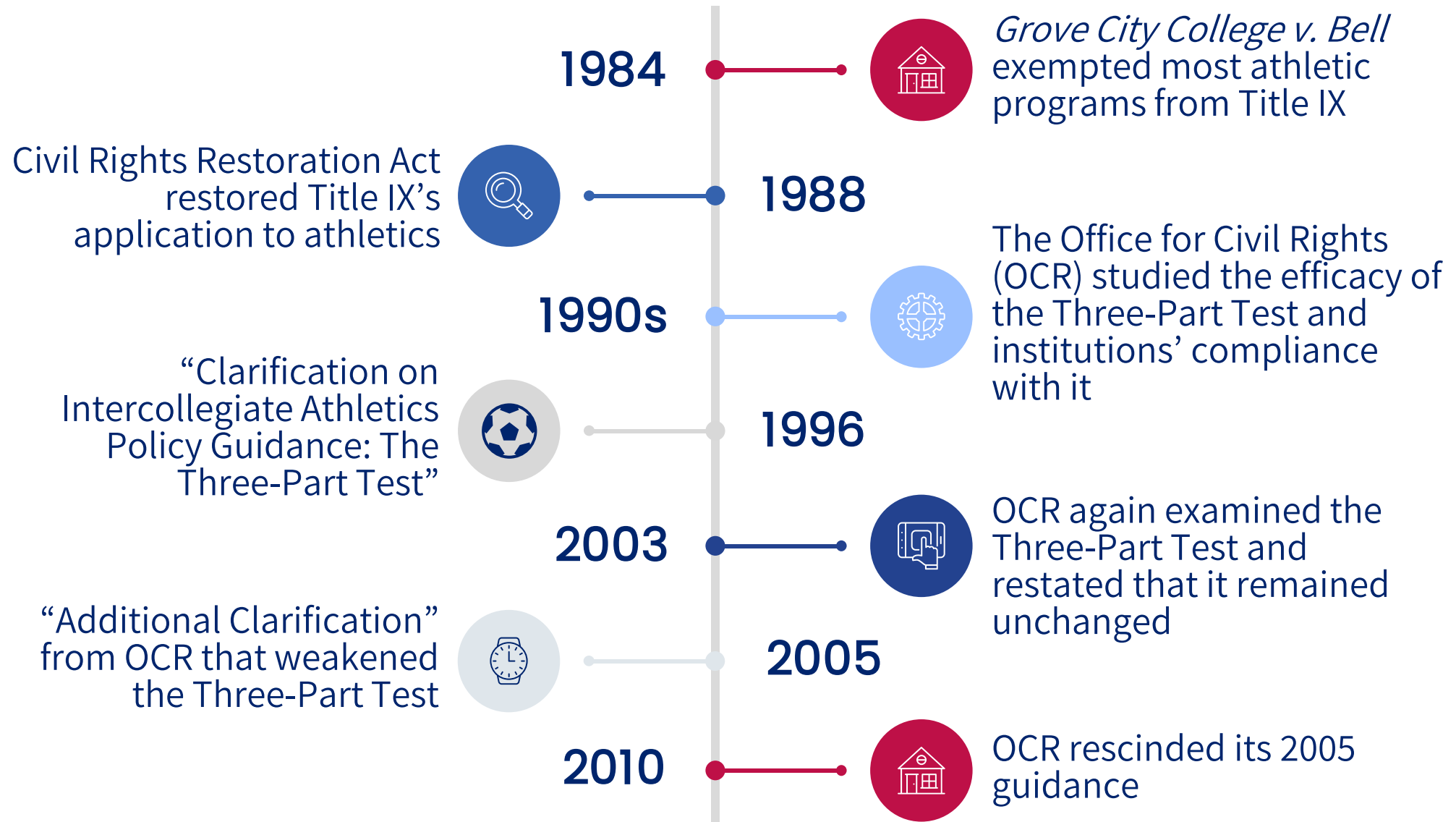
526 U.S. 629 (1999)

Finding in favor of Davis, the Supreme Court expanded on the *Gebser* case:

- The institution must have “**actual notice**” of the harassment; and the institution must have responded to the harassment with “**deliberate indifference.**”

Additionally, court held:

- Harassment must be “**severe, pervasive, and objectively offensive,**” and the indifference “**systemic,**” to the extent that the victim is deprived of educational opportunities or services.
- Justice O’Connor added a framework to determine deliberate indifference – stating that deliberate indifference constitutes a response that is “**clearly unreasonable in light of the known circumstances.**”



Update on the 2024 Title IX Regulations

- **January 9, 2025:** a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety
 - The 2024 Title IX Regulations are now “off the books” and **not** in effect for **any** state, institution, or school effective immediately
- Implications:
 - All federal funding recipients are now subject to the 2020 Title IX Regulations
 - Revert to **2020-compliant** policies for sexual harassment
 - Ensure sex discrimination is covered under policy
 - Consult with legal counsel on strategies for handling completed and ongoing complaints initiated under the 2024 Regulations
 - Ensure compliance with all 1975 and 2020 regulatory requirements

Executive Order re: Sex & Gender

- The Executive Order (EO) defines sex as binary – male or female
 - Detaches the notion of gender or gender identity from the term “sex”
- Directs all federal agencies to enforce civil rights laws in alignment with the EO
 - The Dept of Education will **not** interpret Title IX to protect gender identity
 - The Dept of Justice will issue guidance that *Bostock* does **not** apply to Title IX
 - All agencies must ensure that intimate spaces are designated by sex, not identity
 - All Biden administration EOs addressing gender identity are revoked
- Prioritize investigations/litigation to enforce rights and freedoms to express binary nature of sex
- Prohibits grant funding from promoting gender ideology
- Foreshadows attempts to codify EO’s definitions into law
- Notably, the EO does **not** address sexual orientation

Rescinded Prior Guidance

Rescinds all guidance documents inconsistent with the EO or subsequent guidance including:

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQI+ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQI+ Harassment in Schools
- Enforcement of Title IX...Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*
- AG's memorandum "Application of *Bostock v. Clayton County* to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

Introduction to Title IX Compliance

Title IX and Equity

- Title IX is a sex and gender equity law
- The principles of equity recognize that not all individuals have access to the same resources and opportunities
 - Equity focuses on increasing access by reducing disparities and barriers to increase access
 - Title IX imposes a duty on institutions to stop, prevent, and remedy the inequities created by sex and gender discrimination

Title IX has always mandated a response to sex discrimination, although the 2020 Title IX Regulations only apply to sexual harassment complaints

Essential Compliance Elements

The requirements to **Stop, Prevent,** and **Remedy** guide Title IX Coordinators in their equity and compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, on both individual and institutional levels

Title IX Compliance Oversight

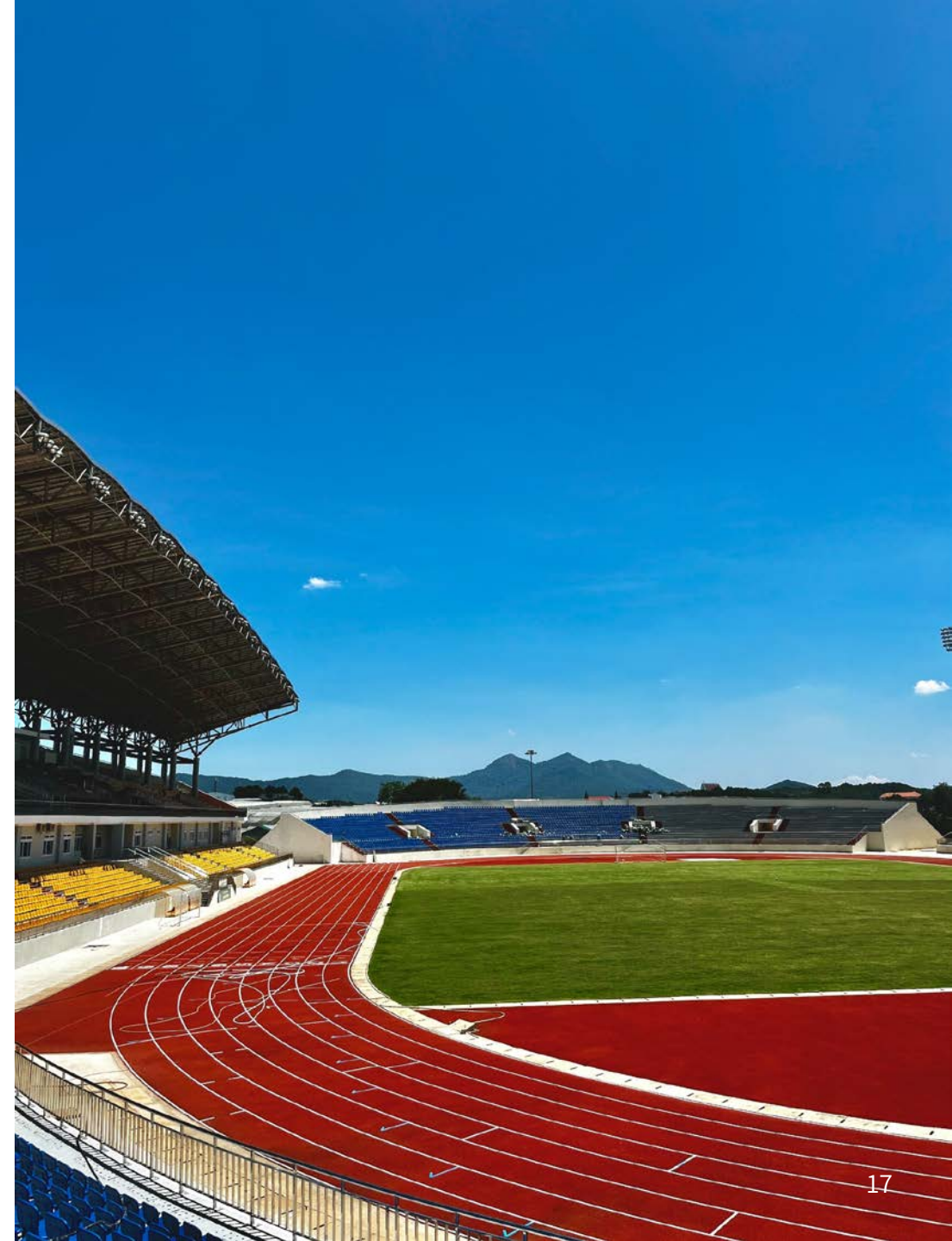
Who is the Title IX Coordinator (TIXC)?

- Role mandated by Title IX regulations
- Oversees institutional Title IX compliance
- Responsibilities fall into two categories:
 - Responding to reports or complaints of sexual harassment and sex discrimination
 - Leading efforts to ensure sex and gender equity across the entire institution



Office for Civil Rights (OCR) Oversight

- OCR enforces Title IX compliance
- Conducts equity compliance reviews
 - Responds to complaints
- Reasons for OCR investigations
 - Athletic equity issues
 - Investigations regarding single-sex programming
 - Failure to accommodate pregnant individuals
 - Failure to stop, prevent, and remedy
 - Failure to investigate



Title IX Scope

Title IX: Scope

Sex Discrimination

- Inequitable Treatment
- Exclusion from participation

Sexual Harassment

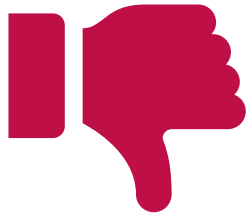
- Quid Pro Quo
- Hostile Environment
- Sexual Assault
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking

Retaliation



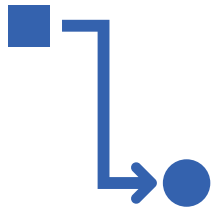
Types of Sex Discrimination Complaints

Types of Discrimination



Disparate Treatment

- Intentional
- Usually requires adverse action
- Affiliation or perception of affiliation with protected characteristic



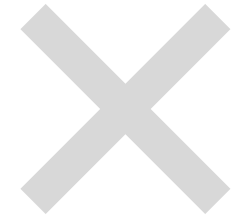
Disparate Impact

- Occurs with unintentional discrimination
- Impact disadvantages certain groups



Harassment

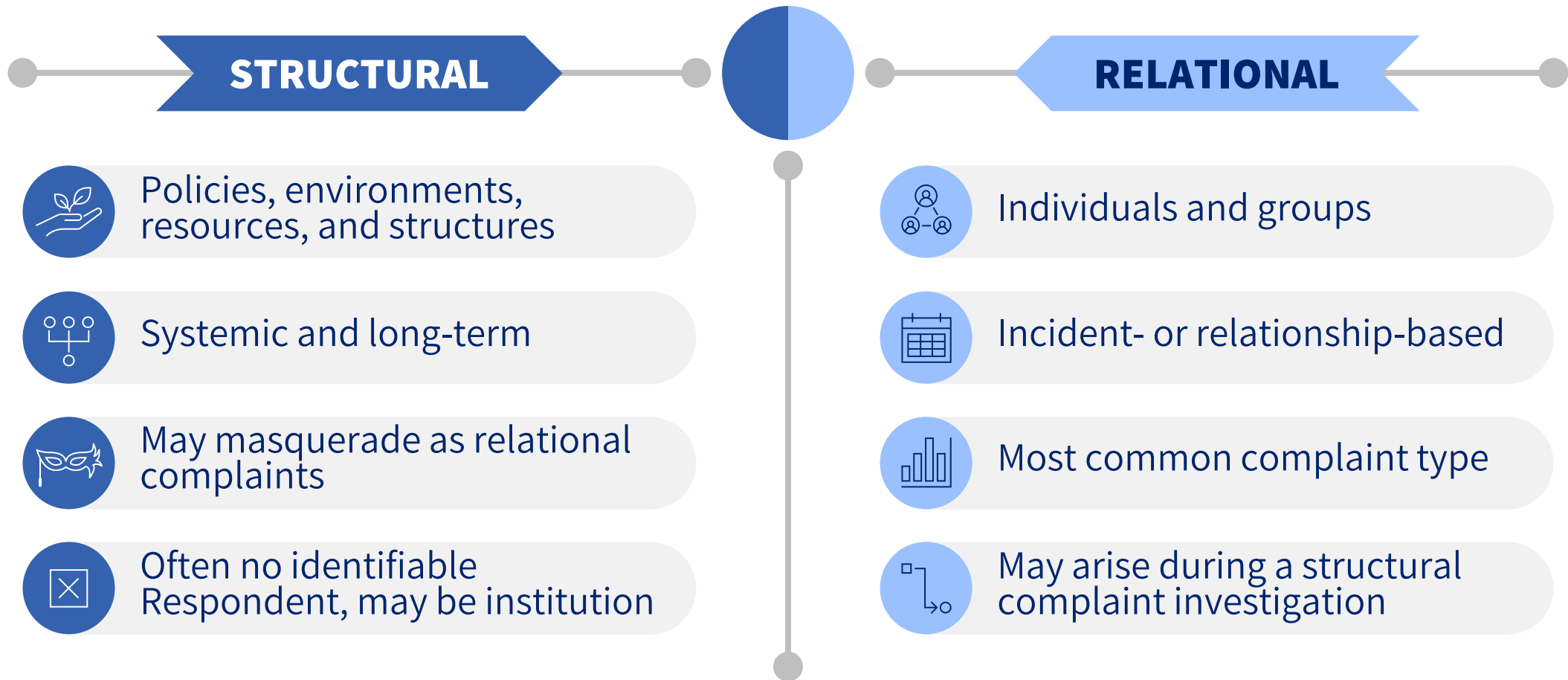
- Quid Pro Quo
- Hostile Environment



Retaliation

- Prohibited if engaged in protected activity
- Suffered adverse academic or employment action

Types of Complaints



Sexual Orientation, Gender Identity, and Gender Expression

Gender Diversity & the Law

- The legal landscape surrounding protections against discrimination on the basis of sexual orientation (SO), gender identity (GI), and gender expression (GE) continues to evolve
- *Clayton County v. Bostock* (2020) extends Title VII to SO and GI
 - Some federal court rulings have extended *Bostock* to Title IX cases
 - Others have declined to do so
- OCR attempted to settle this issue with the 2024 Title IX Regulations; however, those regulations were vacated in *Tennessee v. Cardona*
 - This decision concluded that ED exceeded its authority by interpreting “on the basis of sex” to include GI and SO and held that the regulations were unconstitutional
- Nonetheless, there are strategies and best practices institutions may adopt
 - Strategize with legal counsel to determine relevant federal and state law

Athletics and Facilities Access

- State laws, institutional policy, or athletic governing bodies may apply to athletics participation according to gender identity
 - Consult with legal counsel regarding your strategy
- Permitting access to restrooms and locker rooms according to gender identity likewise may present some challenges
 - Develop a protocol to respond to complaints about trans, transitioning, nonbinary, and genderqueer individuals using the bathroom according to their gender
 - Become involved with capital improvement projects to build or renovate bathrooms, locker rooms, etc. to enhance privacy

Collaborate directly with impacted individuals to design solutions

Discrimination on the Basis of Pregnancy or Related Conditions

1975 Title IX Regulations

Recipient may not:

- Discriminate in its education program or activity against any student or employee based on
 - pregnancy
 - childbirth
 - false pregnancy
 - termination of pregnancy
 - recovery therefrom
- Adopt a rule which treats a student or employee differently on the basis of their actual or potential **parental, family, or marital status**
- Applies to applicants for admission and employment

Reasonable Modifications

- The 1975 Title IX Regulations do not require institutions to modify policies or procedures for students or employees on the basis of pregnancy or a related condition
- ATIXA recommends using the term **reasonable modifications** to distinguish support for pregnancy and related conditions from **supportive measures** for sexual harassment and **reasonable accommodations** for disabilities
- **Reasonable Modifications** to the Recipient's policies, practices, or procedures to prevent discrimination:
 - **Individualized:** must consult with the individual before offering
 - **Voluntary:** individual may accept or decline each reasonable modification offered
 - Fundamental alteration of education program or activity is **NOT** reasonable

Reasonable Modification Examples

Not all reasonable modifications are appropriate for all contexts, but could include:

**Breaks During
Academic
Activities**

**Excusing
Intermittent
Absences**

**Online or
Homebound
Participation**

**Providing
Course
Flexibility**

**Accessing
Alternate
Parking**

Counseling

**Adjusting
Physical Space**

**Arranging
Elevator Access**

Best Practices: Lactation Time & Space

Ensure student and employee access to a lactation space that is functional, appropriate, and safe:

- A space other than a bathroom, that is:
 - Clean
 - Shielded from view
 - Free from intrusion from others
 - Available for expressing breast milk or breastfeeding as needed



Title IX & Disability

Equity and Disability Laws

- Americans with Disabilities Act (ADA)
 - Title II applies to public institutions
 - Title III applies to private institutions and places of public accommodation
- Section 504 of the Federal Rehabilitation Act
 - Section 504 and Title IX share similar language
 - Section 504 protects individuals from discrimination on the basis of their disability
- Title IX Coordinators and Section 504/ADA Coordinators share similar responsibilities
 - Ensuring compliance with anti-discrimination laws
 - Publication of non-discrimination notice
 - Oversight of a grievance process
 - Investigation and resolution of grievances

Key Points

- TIXC and ADA/Section 504 Coordinator may be the same person
- ADA/Section 504 Coordinator should **not** be the same person as the disability/accessibility services coordinator
 - Their duties would create a conflict of interest
- TIXCs and ADA/504 Coordinators should have knowledge of each other's process
 - Communication and collaboration will smooth overlap between processes
- TIXCs should consider consulting with disability/accessibility services professionals early in the Grievance Process, as needed
 - Supportive measures, Advisors, etc.

Title IX and Athletics

Overview

- Since the 1970s, Title IX has spotlighted athletic program equity
 - Accommodation of interests and abilities
 - Equitable distribution of resources
 - Equitable treatment
- TIXC provides oversight, may delegate
 - Senior Woman Administrator (NCAA)
- Compliance requirement applies to
 - Intercollegiate and interscholastic athletics
 - Intramurals
 - Club sports



Accommodating Interests and Abilities: Three-Part Test

Part 1: Opportunities for males and females are **substantially proportionate** to their respective enrollments

Part 2: Where one sex has been underrepresented, there is a **continuing practice of expansion** responsive to interests and abilities of underrepresented sex

Part 3: Where one sex is underrepresented and there is no continuing practice of expansion, demonstrate that interests and abilities of underrepresented sex have been **fully and effectively accommodated** by present program

Single-Sex Programs and Facilities

Single-Sex vs. Preferred Sex Programs

Single-Sex Program

- Activity or program designated men-only or women-only
 - “Women in STEM”
 - “Male Empowerment Network”
- Members of each sex are only permitted to participate in programs designed for their sex

Preferred Sex Program

- Open to all, but advertised or named to suggest participation by one sex is preferred
- This is the best practice approach

Exceptions to the Rule

- There are several **exceptions** that may apply to higher education institutions
- Exceptions may depend upon whether the institution:
 - Is public or private
 - Is religiously affiliated
 - Provides “significant assistance” to a single-sex program
 - Provides separate but comparable facilities or programs for men and women

Notable Exceptions

- Social fraternities and sororities
- Institutions with a religious exemption
- Admissions at private institutions
- Athletic teams
 - Subject to broader equity analysis
- Housing
- Restrooms and locker rooms

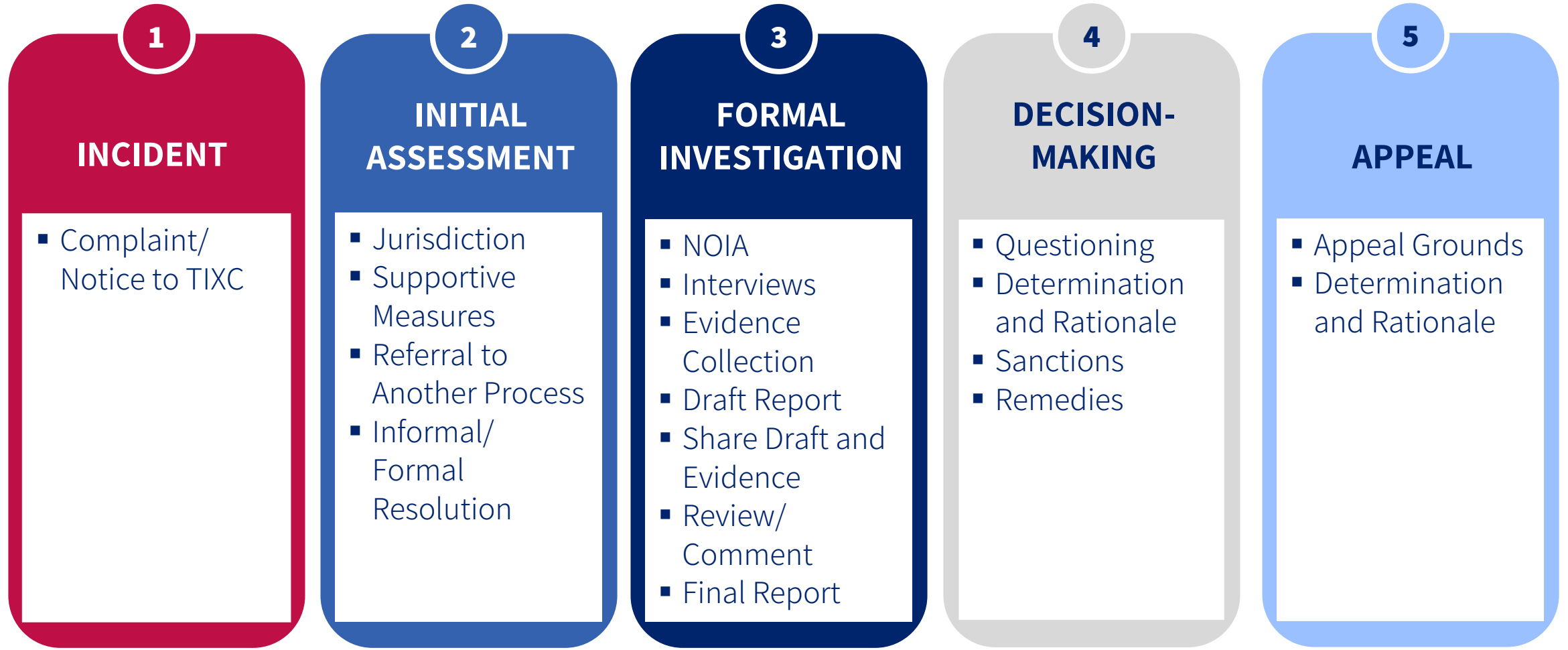


Single-Sex Scholarships

- OCR has recently resolved a few scholarship-based complaints
- Single-sex scholarships are **not** an exception to Title IX
- Institutions may **not**, on the basis of sex:
 - Provide different amounts or types of financial assistance
 - Assist any organization or person providing aid in a discriminatory manner
 - Apply any rule that treats people differently regarding marital or parental status
- Limited “safe harbor”
 - Wills, trusts, bequests, acts of foreign governments

Formal Grievance Process Overview

Grievance Process Overview



Due Process Best Practices

Borrow basic due process protections outlined in the 2020 Regulations:

- Written notice of the allegations and potential policy violations
- Gather and present witnesses and other relevant evidence, without restriction
- Discuss the allegations under investigation, without restriction
- Be accompanied by Advisor of party's choice
- Written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Review and respond to evidence gathered in the investigation
- Opportunity to appeal the outcome on specific grounds

Mandatory Reporting

- ATIXA recommends that **all employees** are **mandated reporters** (except for confidential resources) for alleged sex discrimination
 - Ensures information gets to those trained to respond
 - Enables institution to best support individuals
 - Supports tracking patterns
 - Provides for simpler, uniform, and universal training and reporting
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy

Key State and Federal Laws

The Jeanne Clery Act

Annual Security Report

- requires colleges and universities to report campus crime data
- support victims of violence
- publicly outline their policies and procedures
- Includes the Stop Campus Hazing Act

Stop Campus Hazing Act (SCHA)

What is it?

- The SCHA amends section 485(f) of the Higher Education Act.
- It improves/requires hazing reporting and prevention on college campuses.

What does it do?

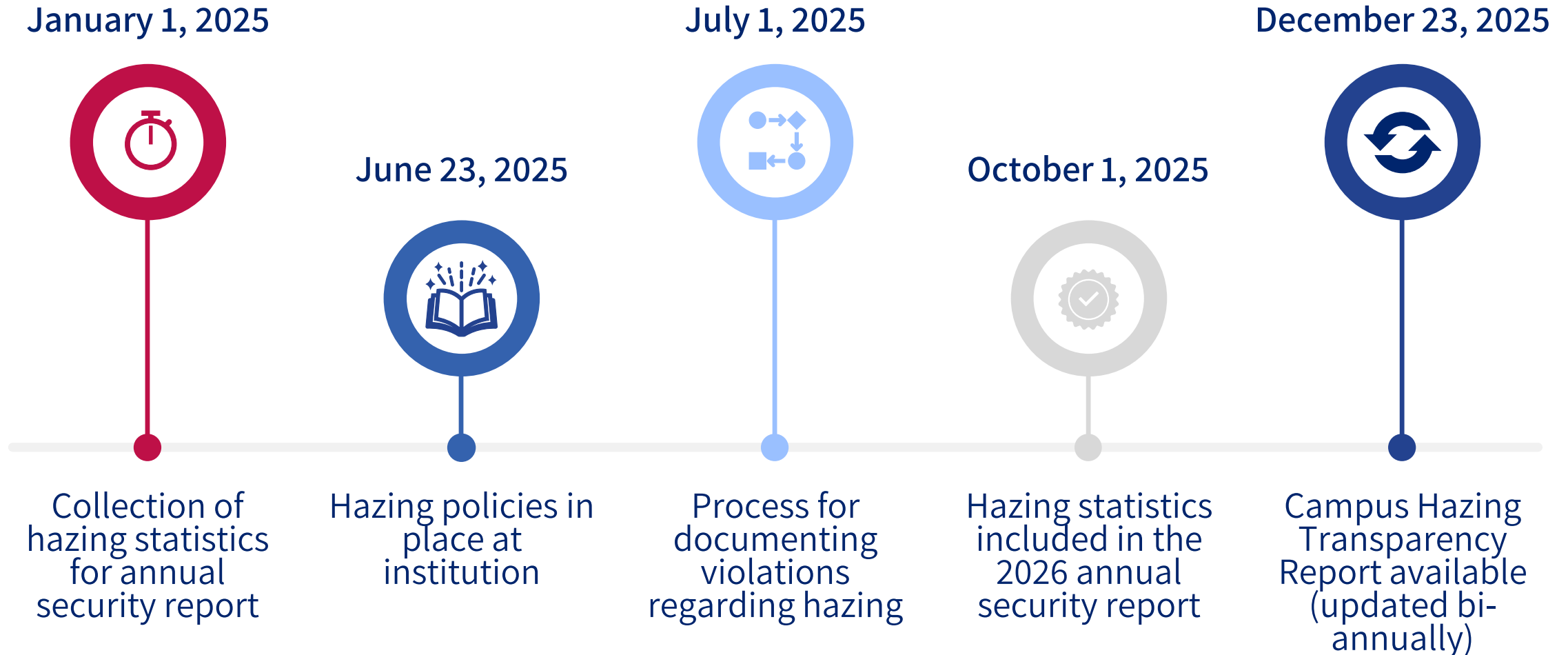
- Requires colleges to include hazing incidents in their Annual Security Report (“Clery Report”)
- Requires implementation of hazing policies, including those specific to prevention
- Requires colleges to publish the Compilation of Hazing Transparency Report

Stop Campus Hazing Act (SCHA)

Defines Hazing as:

- "Hazing is any intentional, knowing, or reckless act committed by a person against a student (regardless of that student's willingness to participate), that (1) is connected with an initiation into, an affiliation with, or the maintenance of membership in, an organization (e.g., a club, athletic team, fraternity, or sorority); and (2) causes or is likely to contribute to a substantial risk, above the reasonable risk encountered in the course of participation in the institution of higher education or the organization, of physical injury, mental harm, or degradation."

SCHA Implementation Requirements



Violence Against Women Act

The Violence Against Women Act (VAWA) requires universities to have policies and procedures in place to address sexual violence, domestic violence, dating violence, and stalking. These policies must include:

- **Reporting**
- **Prevention**
- **Education**
- **Response**
- **Rights**

Fair Housing Act

Prohibits discrimination in housing based on race, color, religion, sex, national origin, familial status, and disability.

Title VII

Prohibits employment discrimination based on the following characteristics:

- Race
- Color
- Religion
- Sex, including pregnancy, sexual orientation, and gender identity
- National origin

Practical Applications

Practical Applications

- Student and Residential Life
- Academic Environment
- Distribution of scholarships and fellowships
- Workplace Settings
- College sponsored programs
- Activities off campus

Intersection of Title IX and Free Speech

- From Tinker to Oyama to Mahoney to Chen
 - [Tinker v. Des Moines Independent Community School District, 393 U.S. 503 \(1969\)](#)
 - [Oyama v. Univ. of Hawaii, No. 13-16524 \(9th Cir. 2015\)](#)
 - [Mahanoy Area School District v. B. L., 141 S. Ct. 2038 \(2021\)](#)
 - [Chen v. Albany 56 F.4th 708 \(9th Cir. 2022\)](#)



Best Practices for Effective Risk Mitigation



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