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SCI TITLE IX FINAL RULES  
SCOPE & JURISDICTION

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**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

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**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

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**TITLE IX: COVERED LOCATIONS**



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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.”



*Davis Next Friend  
LaShonda D. v.  
Monroe Cty. Bd.  
of Educ.*, 526 U.S. 629  
(1999).



TITLE IX: DAVIS V. MONROE

Image credit: Joe Ravi, CC BY-SA 3.0,  
<https://commons.wikimedia.org/w/index.php?curid=16959908>



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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.”



TITLE IX: 2001 DEPARTMENT GUIDANCE



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# TITLE IX FINAL RULES : PLACES



- **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**

- 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

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city

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**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

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**TITLE IX FINAL RULES : OFF-CAMPUS**

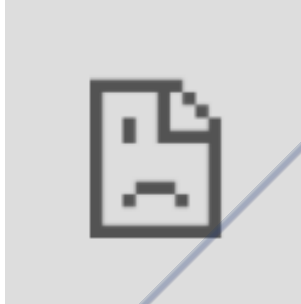


- This need not map on to Clery geography designations!
- Conduct that begins off-campus and moves on-campus:
  - Campus could investigate off-campus and on-campus incidents through separate processes (TIX vs Code)
  - It may be more prudent to consolidate misconduct under the Title IX process.



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## 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



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## 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.



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## TITLE IX: COVERED PERSONS



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- 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



OLD PARADIGM : PERSONS



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### 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



## TITLE IX FINAL RULE: PERSONS COVERED



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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 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

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## 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

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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)



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Persons Held Covered under Case Law	Persons Held Not Covered under Case Law
Non-student living in campus housing and using campus resources	Non-student living off-campus
"Gateway" program participants with clear path to transfer into institution	Prospective students visiting campus (But, Compare Final Rules)
Alumni using campus resources	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <p><b>Consider:</b> Respondents who are not students or employees</p> </div>


COVERED PERSONS : CASE LAW


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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


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