

NSU

Florida

NOVA SOUTHEASTERN
UNIVERSITY

Title IX in 2020

Overview of Policy and Procedural Changes

Fall 2020

Why the change?

- On May 6, 2020, the Dept of Education released revisions to Title IX regulations, to be implemented August 14, 2020
- Focus is on how universities and K-12 schools address sexual violence and sexual harassment affecting students and others accessing NSU's educational programs and activities in the U.S.
- 2,033 published pages of new rules and explanation



Narrows the scope of what the Dept of Ed expects NSU to address under Title IX:

Type of prohibited behavior (violation)

Where & when behavior occurred (jurisdiction)



Requires specific procedures for those cases that are found to be subject to Title IX



What does this mean?

New Definition of Title IX Sexual Harassment

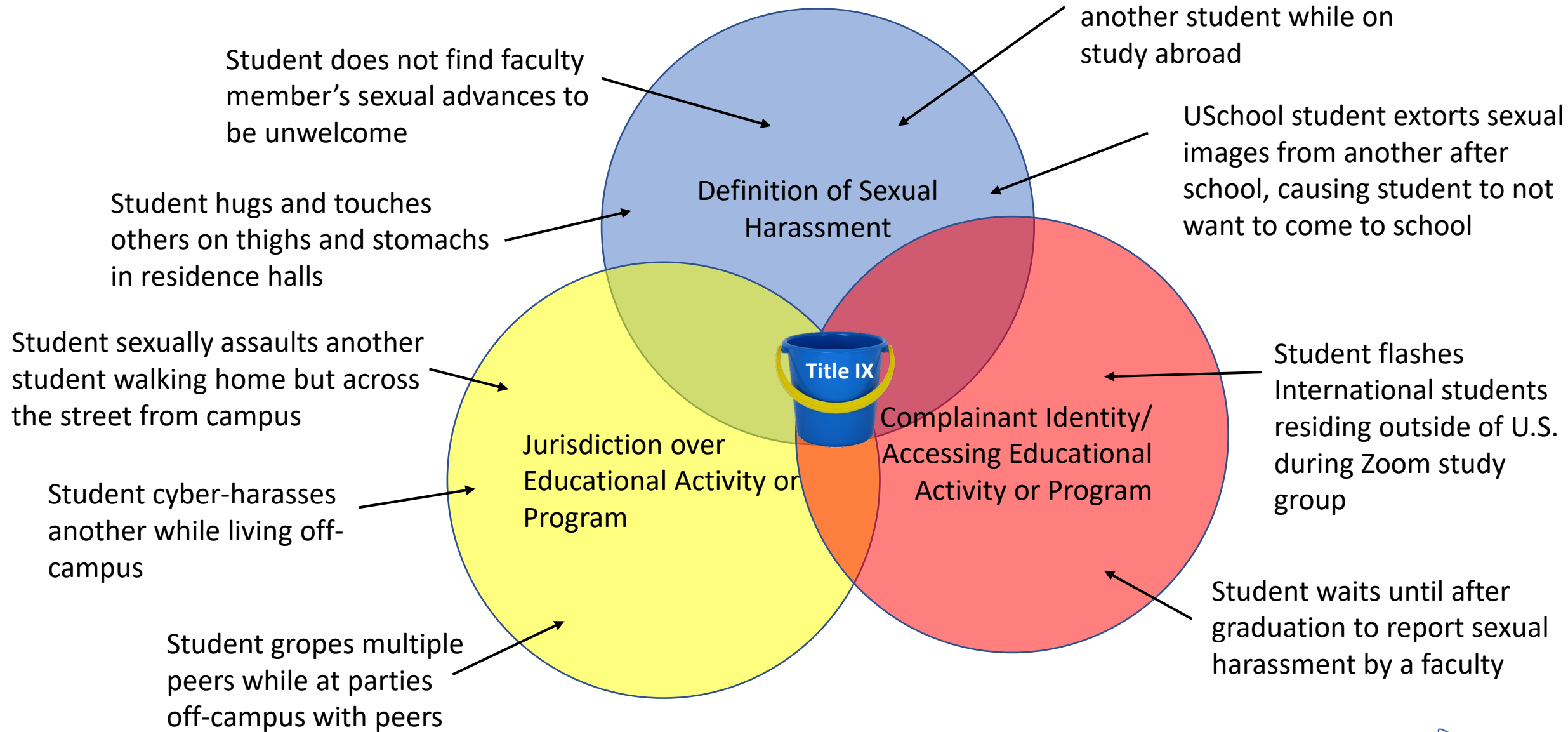
Limited to:

- Unwelcome “**quid pro quo**” sexual harassment by a school employee against a student;
- Sexual harassment that is “so severe, pervasive, and objectively offensive that it effectively **denies a person equal access**” to educational programs; or
- Acts that meet the VAWA definition of a **sex offense** of sexual assault, dating violence, domestic violence, or stalking.
- In addition, Title IX prohibits **retaliation** against any person for pursuing their rights under Title IX.

New Jurisdiction of Title IX (i.e. where and when)

- The complainant must be a student/person accessing NSU's educational programs **in the United States**, and
- NSU must have **substantial control over the alleged perpetrator and the context of harassment**, and
- A formal complaint must be made by an affected person who is **enrolled or trying to access** an NSU program/activity
 - Parents may file a complaint on behalf of an under 18-year-old student

No Longer Title IX





NSU has maintained
an “umbrella” Title
IX/Sexual Misconduct
Policy

Title IX Sexual Harassment

- Quid Pro Quo by employee
- Sex offenses (stalking, DV/IPV, sexual assault)
- Hostile environment
- Retaliation

Which occurred:

- In the U.S.
- Where NSU has control over context/respondent
- And complainant is enrolled/still accessing NSU programs



Sexual Misconduct

- Sex crimes outside of Title IX jurisdiction
- Sexual harassment
- Gender-based harassment
- Sexual exploitation
- Harassment that doesn't deny access but may limit or adversely affect it







What does this mean
for procedures used
for Title IX cases?





Key Changes to Title IX Procedures

- Increase in Transparency:
 - Sharing of more information when an investigation begins, such as complainant's name and more details about report
 - *Providing* all evidence and reports to the parties (and their advisor)
 - Cannot require confidentiality from the parties
 - 10-day review periods to allow for response during investigation
 - New specific requirements to promote the Title IX Coordinator/reporting process, on websites & in handbooks, including all Title IX training materials used



Key Changes to Title IX Procedures (cont)

- Protection of due process
 - Prevents imposing disciplinary action prior to a decision, resulting schools limited to supportive measures or emergency removal when standards are met
 - A live or virtual hearing* where parties' advisors can cross-examine all parties and witnesses
 - Informal resolution permitted when all parties agree and complaint does not involve an employee-on-student quid pro quo
 - Specific standards specified for appeals



Interim Measures/Emergency Removal

- Supportive measures may not be “punitive or disciplinary, but may burden a respondent as long as the burden is not unreasonable”
- ***Mutual*** no-contact orders are permitted
- Emergency Removal requires:
 - An individualized safety and risk analysis
 - Determination that an immediate threat to the physical health or safety of any student arising from the allegations that justifies removal
 - Notice and an opportunity to challenge immediately following the removal
- Could involve a room change or class section change, but not likely removal from a club or athletic team



Intersection with Law Enforcement

- Permits but does not require that an institution delay an investigation on a *temporary* basis for “good cause”; however, only *after* the parties received initial written notice.
- Any police records obtained by NSU for a Title IX investigation must still be made available to the parties.
- VAWA protections still apply:
 - Right to report to LE, not report to LE, and obtain assistance from NSU in reporting to LE

What about non-Title IX Sexual Misconduct?

- Does *not* need to follow Title IX procedures
- Referred to Student Code of Conduct or other accountability process
- Sex offenses under VAWA but outside of Title IX must still provide procedural protections:
 - Be conducted by people with annual training on specific subjects
 - Right to an advisor
 - Right to know the outcome



What is staying the same?

- ✓ NSU still prohibits all sexual misconduct under the umbrella policy.
- ✓ Complainants will still receive support, resources, and information so they can decide if they want to pursue a formal complaint.
- ✓ High level of support for *all* students affected by sexual misconduct.
- ✓ Individualized consideration for interim measures, such as emergency removal, no contact orders, or supportive measures.
- ✓ Opportunities exist to address non-Title IX harassment outside of Title IX procedures (i.e. Student Code of Conduct, USchool disciplinary process, Employee Policy Manual, etc.).

What is staying the same?

- ✓ Fair process, including:
 - ✓ Preponderance of the evidence standard
 - ✓ Procedures conducted by well-trained individuals
 - ✓ Opportunity to review/respond to all information
 - ✓ Opportunity for parties to appeal
- ✓ Prevention involves the full spectrum of sexual misconduct.
- ✓ Employees are still required to report all incidents to Title IX Coordinator.

So what is the bottom line?

- Employees are still required to report all Title IX/Sexual Misconduct to the Title IX Coordinator.
- The prohibited behaviors under the Title IX/Sexual Misconduct policy have not changed.
- Reports that meet the definition of Title IX Sexual Harassment (by type and jurisdiction) must be processed in accordance with the Title IX Resolution Procedures.
- Reports of sexual misconduct outside of the limited scope of Title IX may be subject in accordance with other NSU procedures.
- Students and those affected will still be given support, including resources and information to make informed decisions.

TITLE IX: SEXUAL MISCONDUCT

[Home](#)[Getting Help During COVID-19](#)[Initial Responses to Sexual Violence](#)[NSU Title IX/Sexual Misconduct – Policy](#)[Overview](#)[Title IX Sexual Harassment](#)[Title IX Jurisdiction](#)[Other Prohibited Sexual Misconduct](#)[Standards of Analysis](#)[Title IX Resolution Procedures](#)[Rights and Options for Victims of Sexual Violence](#)[Violations of the Law](#) +[Prevention of Sexual Misconduct](#) +[Virtual Resources](#) +[Archived Information](#) +[NSU Home](#) > [Title IX](#) >

IMPORTANT UPDATES from NSU's Title IX Coordinator:

New Policy & Procedures: The Department of Education recently released new regulations regarding Title IX, and NSU's Title IX/Sexual Misconduct Policy and associated procedures have been revised to ensure NSU's compliance with this important law. A formal announcement to the NSU community is forthcoming, additional information about how the procedures are implemented will be made available, and NSU's online prevention training is being revised and will be sent to NSU students and employees soon. While there are revisions to policy and procedures, the expectations of the NSU community remain the same – to refrain from engaging in sexual misconduct and to engage in appropriate bystander intervention. Employees are still required to [report](#) potential incidents of Sexual Misconduct to the Title IX Coordinator and students can still expect a high level of support from the Title IX staff. Despite shifts in regulatory requirements, our purpose remains the same: to lead the prevention and resolution of sexual misconduct through caring responses and the creation of community champions to eradicate sexual harassment and violence.

Responses to Sexual Misconduct during COVID-19: Whether at the Davie campus or participating virtually, Title IX support for students and employees continues. Our usual forms of communication are still open: the [online reporting form](#) remains the best way to report concerns, [email](#) is the quickest way to reach us, and we can also be reached by phone. We will continue to communicate with students primarily by email, with options for virtual and telephone meetings. In addition, sexual assault awareness programming and other educational opportunities will be provided through virtual and other creative means until we can ensure the safety of in-person engagement.

[CLICK HERE TO ACCESS VIRTUAL RESOURCES FOR STUDENTS, FACULTY, & K-12 PARENTS](#)

Connect to Title IX Resources

[After An Incident](#)[GET HELP](#)[Report an Incident to NSU](#)[REPORT](#)[Policy, Procedures, and Resources](#)[LEARN](#)[OPEN](#)

Questions & Discussion

TITLE IX STAFF



LAURA BENNETT
TITLE IX COORDINATOR

Website
www.nova.edu/title-ix

Email
titleix@nova.edu



DESMOND DANIELS
DEPUTY TITLE IX COORDINATOR

NSU

Florida

NOVA SOUTHEASTERN
UNIVERSITY