

TITLE IX TRAINING

SCOPE OF TITLE IX JURISDICTION

AUSTIN COLLEGE – TITLE IX

SCOPE OF TITLE IX OVERVIEW

- Definition
- On Campus
- Off Campus
- Online

SCOPE OF THE RECIPIENT'S EDUCATION PROGRAM OR ACTIVITY – DEFINITION

- Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. <https://www.federalregister.gov/d/2020-10512/p-6454>
- “all of the operations of” a postsecondary institution <https://www.federalregister.gov/d/2020-10512/p-2479>

SCOPE OF TITLE IX JURISDICTION - ON CAMPUS

- “all of the operations of” a recipient (per existing statutory and regulatory provisions), and the additional “substantial control” language in these final regulations, clearly include all incidents of sexual harassment occurring on a recipient's campus. <https://www.federalregister.gov/d/2020-10512/p-2483>
- For example, “education program or activity” in these final regulations includes buildings within the confines of the campus on land owned by the institution that the institution may rent to a recognized student organization. <https://www.federalregister.gov/d/2020-10512/p-2486>

SCOPE OF TITLE IX JURISDICTION - OFF CAMPUS

- Title IX obligations extend to sexual harassment incidents that occur off campus if any of three conditions are met:
 - 1) If the off-campus incident occurs as part of the recipient's “operations” pursuant to [20 U.S.C. 1687](#) and [34 CFR 106.2\(h\)](#);
 - 2) If the recipient exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a);
 - 3) If a sexual harassment incident occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution pursuant to § 106.44(a).

SCOPE OF TITLE IX - OFF CAMPUS GUIDANCE

- Federal court opinions that have considered whether sexual harassment occurred in a recipient's education program or activity by examining factors such as whether the recipient funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred. <https://www.federalregister.gov/d/2020-10512/p-2484>
- It may be helpful or useful for recipients to consider factors applied by Federal courts to determine the scope of a recipient's program or activity, no single factor is determinative. <https://www.federalregister.gov/d/2020-10512/p-2484>

SCOPE OF TITLE IX STUDENT ORGANIZATION CONTROLLED BLDG. GUIDANCE

- The recipient's Title IX obligations apply to sexual harassment that occurs in buildings owned or controlled by such a student organization, irrespective of whether the building is on campus or off campus, and irrespective of whether the recipient exercised substantial control over the respondent and the context of the harassment outside the fact of officially recognizing the fraternity or sorority that owns or controls the building.

<https://www.federalregister.gov/d/2020-10512/p-2485>

SCOPE OF TITLE IX SCENARIO

- An Austin College officially recognized student organization has an event at an off campus location not owned *not* owned or controlled by the student organization.
- A sexual assault occurs at the event involving members of the officially recognized student organization and another Austin College student.
- The recipient's Title IX obligations will depend on whether the college exercised substantial control over the respondent and the context of the harassment, or whether the circumstances may otherwise be determined to have been part of the “operations of” the recipient. <https://www.federalregister.gov/d/2020-10512/p-2485>

SCOPE OF TITLE IX JURISDICTION - ONLINE

- “operations” may certainly include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the recipient. <https://www.federalregister.gov/d/2020-10512/p-2528>
- These final regulations apply to sexual harassment perpetrated through use of cell phones or the internet if sexual harassment occurred in the recipient's education program or activity. <https://www.federalregister.gov/d/2020-10512/p-2530>

SCOPE OF TITLE IX JURISDICTION ONLINE HARASSMENT GUIDANCE

- The factual circumstances of online harassment must be analyzed to determine if it occurred in an education program or activity. For example, a student using a personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the recipient exercises substantial control. <https://www.federalregister.gov/d/2020-10512/p-2528>