Association of Title IX Administrators

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Intersectionality and Title VI Complaints: Overlapping Protected Identities

VIewpoints

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TNG Strategic Risk Management Solutions

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Today's Presenters

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Chair: TNG Board of Directors; TNG Management Committee; ATIXA Advisory Board; Chief Resolution Officer, FAIR Center

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Title VI: Overview and Procedures

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Title VI of the Civil Rights Act of 1964

"No person in the United States shall, on the ground of **race, color, or national origin**, be **excluded from participation in, be denied the benefits of, or be subjected to discrimination** under any **program or activity receiving federal financial assistance**."

- 42 U.S.C. § 2000d

VI

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Definitions

Race

- Membership in a group based on physical or cultural characteristics associated with a certain race, ancestry, or ethnic heritage

Color

- Skin color, tone, pigmentation, shade, or complexion, regardless of racial or ethnic background

National Origin

- Ancestry, ethnicity, or country of origin; includes linguistic and cultural characteristics

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Discrimination Defined

- The act of treating an individual differently, or less favorably, based upon actual or perceived protected characteristics

Can be intentional or unintentional

Always based on a protected characteristic(s)

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Federally Protected Characteristics

- Race
- Color
- Religion or Creed
- National Origin or Ancestry
- Sex
- Age
- Disability (Physical and Mental)
- Veteran Status
- Predisposing Genetic Information
- Citizenship

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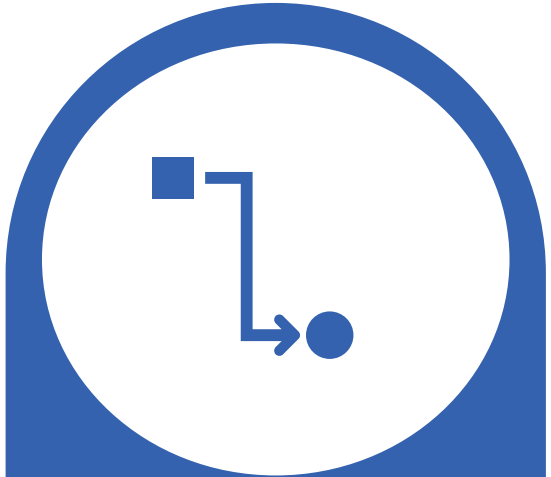
Type of Discrimination

Disparate Treatment

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



Disparate Impact

- Occurs with unintentional discrimination
- Impact disadvantages certain groups

Harassment

- Severe OR pervasive OR persistent behavior that limits a person's benefits, services, or opportunities

Retaliation

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

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Title VI Resolution Process Options

- Offer a formal grievance process as well as informal resolution
  - **ATIXA's Model Policy 1P2P** is one policy and procedure for all civil rights complaints
    - ATIXA's "Process B" in 1P2P is compliant for Title VI complaints
- **Formal Process**
  - Investigation followed by decision-making phase
    - Best practice includes offering an opportunity for appeal
- **Informal Process**
  - Supportive resolution
  - Educational conversation
  - Accepted responsibility
  - Alternative resolution (AR)

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Managing Intersectionality Complaints

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Complaints Often Involve Multiple Issues

- A complaint may involve race, national origin, shared ancestry, disability, sex, religion, or other alleged institutional policy violations at the same time.
- Practitioners must be able to assess whether the harm is best understood as:
  - One protected identity issue;
  - Multiple parallel protected identity issues; or
  - An overlapping/intersectional experience that cannot be fairly assessed in isolation.

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Where Complexity Enters the Process

- **Intersectional complaints will involve questions about the following:**
  - **Jurisdiction**
    - Which policy, law, office, or process applies?
  - **Scope**
    - What conduct, context, and identity-based dimensions are included?
  - **Framing**
    - Are allegations separated, combined, or analyzed together?
  - **Investigation**
    - What questions are needed to capture the full reported harm?
  - **Resolution**
    - Does the outcome address the actual nature of the concern?

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Assessing Intersectional Animus

- A complaint can be founded not on "proof" of animus, but on animus as a more likely explanation than other reasons
- Where one form of animus is proven, does that make the other alleged forms of animus more likely to be true, too?
- What do you do where animuses are so entangled as to be inextricable?
- How can burden-shifting analysis aid the assessment of intersectional complaints?
- Of direct evidence, comparator evidence, and convincing mosaic evidence, which is likely the most useful tool for intersectional complaints?

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Practical Lens for Practitioners

- The goal is to avoid making a complex complaint artificially narrow
- Practitioners should ask:
  - What protected identities are implicated?
  - How does the Complainant describe the harm?
  - Would separating the identities distort the alleged experience?
  - Are different policies or procedures triggered?
  - What process best preserves fairness, clarity, and defensibility—and do you have a process that can govern a broad investigation (1P2P)?

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Case Study

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Case Study: Jordan

Jordan is a first-year student in a graduate public health program. Jordan identifies as Black, Muslim, and nonbinary. Jordan is also an international student from Nigeria. Over the course of the semester, Jordan reports several incidents involving classmates in a required cohort-based seminar:

- During a class discussion about global health systems, a student said, “In some cultures, people just do not value science the same way we do here.” After Jordan challenged the comment, another student said that Jordan is “always making things about race.”
- A third student later asked Jordan whether they were “allowed to be nonbinary back home.”
- During a group project, Jordan is repeatedly assigned the “community outreach” portion of the work, while other students handle data analysis and presentation design.

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Case Study: Jordan (Cont.)

- In a group chat, classmates referred to Jordan as “aggressive,” “hard to talk to,” and “offended by everything.”
- One student misgenders Jordan repeatedly, even after being corrected.
- Another student said, “I am just confused because your religion does not exactly seem LGBTQ-friendly.”
- Jordan reports feeling isolated in the cohort and says the conduct is affecting their ability to participate fully in class and group assignments. Jordan tells the Title VI office: “I do not know whether this is racism, Islamophobia, transphobia, xenophobia, or all of it. But I know it is not just one thing.”

How should the institution frame, assess, and respond to Jordan’s complaint without artificially narrowing the reported harm?

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Case Study: Discussion

- What protected identities may be implicated?
- Does the reported conduct suggest separate allegations, overlapping allegations, or both?
- Which facts may implicate Title VI, and which facts may implicate other institutional policies?
- How should the intake conversation explore Jordan's experience without leading Jordan to characterize the conduct in a particular category?
- What additional facts would you need before determining jurisdiction, scope, or process?
- How might the institution avoid minimizing the complaint by treating each comment or incident in isolation?

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