

Program Purpose:
Current understanding of how "sex" and "gender" are defined and applied under federal law — including the political and regulatory forces reshaping those definitions in real time — and what that means for protecting all students on campus.

Sex vs. Gender

LEGAL DEFINITIONS AND PRACTICAL IMPACT



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Agenda

- Definitions
- Title IX and legislative framework
- Arc of legal rulings
- Practical implications

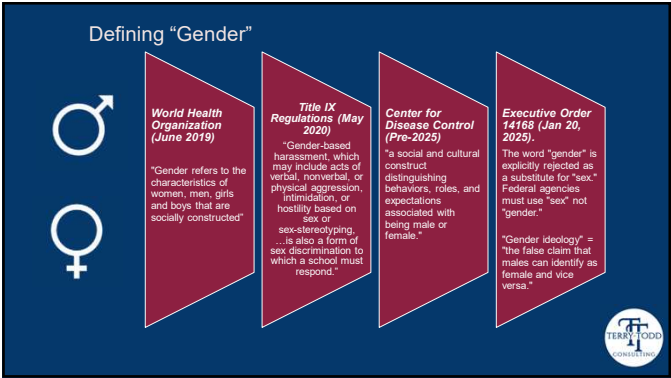
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Terminology

Sexual Orientation

A person's physical, romantic, and/or emotional attraction to members of the same and/or opposite sex.

Gender Identity

A person's internal sense of being male, female, or a non-binary identity that is a combination of both or neither; may be different from gender at birth.

Gender Expression

The way a person presents or communicates gender through appearance, dress, behavior, and other observable characteristics.



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Clery: Hate Crimes



Gender

Sexual Orientation

Gender Identity



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Criminal Justice Information Services (CJIS) Division
Uniform Crime Reporting (UCR) Program



Hate Crime
Data Collection Guidelines
And Training Manual



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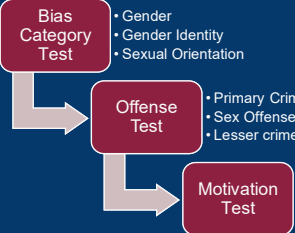
UCR Definitions of Bias

Gender Bias	Gender Identity Bias	Sexual Orientation Bias
A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender. <i>Gender is used synonymously with sex to denote whether a newborn is male or female at birth, e.g., "it's a boy" or "it's a girl."</i>	A preformed negative opinion or attitude toward a person based on their actual or perceived gender identity, e.g., bias against transgender or gender nonconforming individuals. <i>Gender identity is a person's internal sense of being male, female, or a non-binary identity that is a combination of both or neither.</i>	A preformed negative opinion or attitude toward a person based on their actual or perceived sexual orientation. <i>Sexual Orientation is a person's physical, romantic, and/or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) individuals.</i>



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Clery: Counting Hate Crimes



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graph LR; A[Bias Category Test] --> B[Offense Test]; B --> C[Motivation Test];
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- Gender
- Gender Identity
- Sexual Orientation

- Primary Crimes
- Sex Offenses
- Lesser crimes

- Evidence of perpetrator violence
- Second level review



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The Statutory Problem



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Title IX Statute

- 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, except that:*



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“On the basis of sex”

“No person in the United States shall, on the basis of sex, . . .be subjected to discrimination.”

*“The NPRM did not propose to define **sex**. The Department declines to address that matter in these final regulations. The Department will continue to look to the Title IX statute and the Department’s Title IX implementing regulations with respect to the meaning of the word **sex** for Title IX purposes.”*

- Preamble to the 2020 Title IX Regulations



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Definitions in the 2020 Title IX Regulations

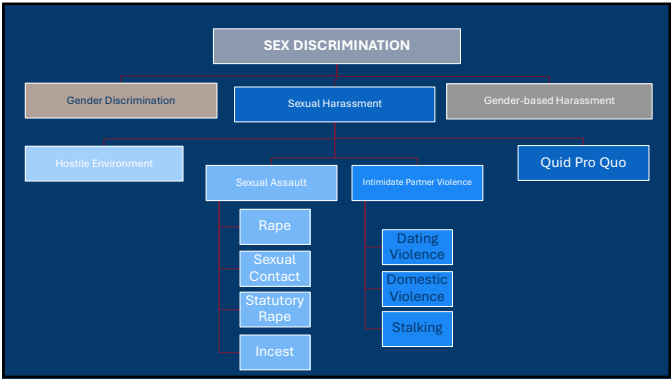
- Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:
- Any person may report **sex discrimination**, including sexual harassment.
- Discrimination on the basis of sex.** A recipient’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.



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2024 Title IX Regulations

- Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex
- Scope. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.



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The Judicial Problem



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Bostock v. Clayton County (2020)

"It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind.

☐ Held that Title VII bars firing someone for being gay or transgender.

☐ Interpreted Title VII only — it expressly did not decide whether the same logic applies to Title IX.

☐ Post Bostock split

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Post Bostock Expansion

- **Fourth Circuit** held that state health plans that conditioned coverage for certain surgeries on whether they aligned a patient's sex assigned at birth with their gender identity
- **Seventh Circuit** applied Bostock's reasoning to a Title IX challenge to a school bathroom policy that barred transgender students from using restrooms consistent with their gender identity
- **Ninth Circuit** relied on Bostock's logic to conclude that a law that limits athletic opportunities only for transgender girls and women is discrimination



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Post Bostock Restrictions

Second Circuit wrote, “Bostock did not establish that assigning sports teams based on biological sex would constitute discrimination, much less hold that discrimination based on transgender status is generally prohibited under federal law.”

Eleventh Circuit (en banc), in *Adams v. School Board of St. Johns County*, held that separating school bathrooms by biological sex does not violate Title IX or the Equal Protection Clause — expressly declining to extend Bostock’s Title VII reasoning to the school setting, and creating a circuit split with the Fourth Circuit’s earlier *Grimm v. Gloucester County* decision

Sixth Circuit panel that vacated the 2024 Title IX Rule — held that Title VII’s definition “simply does not mean the same thing” for Title IX.

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Post Bostock Restrictions

U.S. Supreme Court, in *United States v. Skrmetti* (2025), upheld Tennessee’s ban on puberty blockers and hormone therapy for minors, holding the law classifies by age and medical use rather than sex, and declined to import Bostock’s Title VII reasoning into Equal Protection analysis

U.S. Supreme Court, in *West Virginia v. B.P.J.* and *Little v. Hecox* (June 30, 2026), reversed the Fourth and Ninth Circuits, holding that Title IX and the Equal Protection Clause permit states to reserve women’s and girls’ sports teams for biological females

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West Virginia v. B.P.J. (June 30, 2026)

- 6-3 majority
- Holding: States *may* restrict girls’/women’s sports to biological females under both Title IX and the Equal Protection Clause — they do not *have* to
- Title IX’s “sex” = biological sex in the athletic context — Court relied on statutory text, 1974 Javits Amendment, and 1975 HEW regulations
- Equal Protection: sex-based sports classifications survive intermediate scrutiny when tied to safety and competitive fairness
- Court explicitly did NOT rule that trans students have no competitive advantage — called it “subject of ongoing medical and scientific debate”

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West Virginia v. B.P.J. (June 30, 2026)

- ✗ Does NOT require schools to exclude transgender girls — permits, doesn't mandate
- ✗ Does NOT address classrooms, restrooms, housing, or programs — explicitly limited to sports
- ✗ Does NOT resolve what level of constitutional scrutiny applies to transgender classifications generally
- ✗ Does NOT overrule *Whitaker / A.C.* in the 7th Circuit on bathroom/facility access
- ✗ Does NOT define "sex" for Title IX purposes outside athletics



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Our Response



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Quality Investigations

What is evidence that behavior is “on the basis of sex?”



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Quality Response

What do we need to do to meet the needs of our campus community?



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Case Study

- Bert, Ernie, Oscar and Elmo are freshmen roommates and all on the football team.
- Week 2 of school, Ernie strips down and jumps into the room wearing only his helmet. He said he did it to be funny. Bert is alone in the room, playing a video game and wearing headphones. He turns, sees, Ernie full frontal, shakes his head, turns back to his video game.
- Two other roommates, Oscar and Elmo videotape it and post on the team group chat. Comments are mostly making fun of Ernie and his very red butt. (no frontal nudity in the posted video).
- One-week later Bert alleges that Ernie shoved him during an argument. Later that night, Bert finds what he believes is semen on his bedspread. He believes it was Ernie. Bert brings a Title IX complaint against Ernie.





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Thank You!

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