

TIME WITH IX

PRESENTED BY

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WELCOME TO ATIXA TIME WITH IX

Zoom Meeting Etiquette: This program is being recorded

- **Please Keep your Microphone Muted Throughout the Meeting**
 - On your video screen you should see a mute/unmute button
 - When muted you will see your microphone appear in red on your video screen
 - You can choose to have your video on or off throughout the meeting
- **To Ask a Question Please Use the “Raise Hand” Feature**
 - Click on “participants” at the bottom of your screen. A participant box will appear and at the bottom you will click “raise hand”
 - Keep your hand raised and we will call upon you to speak. Please remember to unmute your microphone to ask your question. Please mute again when you finish speaking
 - If you click raise hand by accident or if your question is answered, you can click the button again to lower your hand
 - If you would like to ask a question anonymously, you can send that to the moderator in a private chat.
- **Chat Feature**
 - Please reserve the chat feature for more informal communication, not content based questions. You can chat here with other attendees and ATIXA staff! You can choose to chat privately with other attendees or with the group as a whole. We will also post links to the chat for resources discussed during the meeting.

ATIXA SUMMER CERTIFICATION SERIES (SCS)



Hearing Officer

- **June 21-22:** Title IX Hearing Officer and Decision-Maker
- **June 23:** Title IX Hearing Chairs
- **June 24:** Title IX Hearing Advisors
- **June 25:** Title IX Hearing Officer and Decision-Maker:
Interactive Mock Hearing (Non-certifying)



K-12

- **August 2-3:** K-12 Coordinator Level One: Foundations
- **August 2-3:** K-12 Investigator Level One: Foundations
- **August 4:** K-12 Decision-Maker
- **August 4:** K-12 504/ADA Coordinator
- **August 5:** K-12 Title IX Athletics
- **August 5-6:** K-12 Coordinator Two: Advanced

WHY SCS?

1.

Ability to earn up to six certifications in 2 weeks

2.

Get your entire team trained in one week—group rates available!

3.

Access to event lobby: One stop shop for all your course materials, supplemental reading, resources, and Zoom links.

Group rates are available for 5+ individuals. To register, visit atixa.org/SCS

2021 ATIXA ANNUAL CONFERENCE

ATIXA is soliciting program proposals for our Annual Conference taking place virtually in November 2021.

The submission deadline is August 6.

We are seeking sessions which present information in the following areas:

- Relevance to the topics of Title IX, Policies, Advocacy and Prevention, Title VII, ADA/504, and the Violence Against Women Act 304, Hearing Panels, 2020 Regulations, or the Clery Act
- Completeness, detail, and professionalism of the proposal
- Evidence-based, promising, and innovative model programs/practices are welcome, but an institution-specific program must include broader application and takeaways to be considered
- Engaging format, presenters, and/or concepts



CALL FOR PROPOSALS

To submit a proposal, visit surveymonkey.com/r/2CSMXSJ

ATIXA TIME WITH IX

Today's Topic: Intersection of Disability and Title IX

Upcoming Time with IX

Informal Resolution or Mediation

- Members only
- Friday, July 16, 2021
- 3:00pm–4:30pm ET

Register:

www.atixa.org/events/

This Time with IX will discuss:

- The impact of sexual violence on students with disabilities
- Disability considerations for the Title IX resolution process and response
- Pregnancy and Title IX
- Addressing involuntary withdrawal

SCOPE OF THE PROBLEM

- Children with disabilities are 2.9 times more likely than children without disabilities to be sexually abused.¹
- 1 out of 3 (31.6%) undergraduate female students with a disability reported nonconsensual sexual contact involving physical force or incapacitation compared to 18.4% of undergraduate females without a disability.²

Sources:

¹Emily M. Lund and Jessica E. Vaught, "Victimisation of Children with Disabilities," *The Lancet* 380 (July 2012), 867, cited in Nancy Smith and Sandra Harrell, Vera Institute of Justice, *Sexual Abuse of Children with Disabilities: A National Snapshot* (2013), available at <https://www.vera.org/publications/sexual-abuse-of-children-with-disabilities-a-national-snapshot> accessed June 17, 2021.

²David Cantor et al., at 35, 102. See also AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct Fact Sheet, available at https://www.aau.edu/sites/default/files/2021-06/Files/Climate%20Survey/Fact%20Sheet%20for%20AAU%20Climate%20Survey%2015_0.pdf accessed June 17, 2021.

SCOPE OF THE PROBLEM

- Men with a disability are at greater risk for experiencing sexual violence other than rape (e.g., being made to penetrate, sexual coercion, unwanted sexual contact, and noncontact unwanted sexual experiences) than men without a disability
- Women with a disability are more likely than women without a disability to report experiencing rape, sexual violence other than rape, physical violence, stalking, psychological aggression, and control of reproductive or sexual health by an intimate partner.
- Men with a disability are more likely than men without a disability to report experiencing stalking and psychological aggression by an intimate partner.

Source: CDC National Center for Injury Prevention and Control, Division of Violence Prevention

DISABILITY-RELATED INTERSECTIONS WITH TITLE IX RESOLUTION PROCESS

- Barriers to engaging the resolution process
- Accommodations for individuals as they participate in the Title IX resolution process
- Consider training for institution-appointed advisors
- Emergency Removal
- Manifestation Determination (K2)
- Restriction on use of medical/privileged information
- Impact on determination of a policy violation?
- Impact on sanctioning?

RESPONSE CONSIDERATIONS

- Involve your accessibility/disability services office/IEP Team
- Offer appropriate due process and follow your process if you plan to involuntarily remove from school or job
- Use clearly written policies and referrals based on **behaviors**, not disabilities or conditions
- Address **actual** significant disruptions to campus, not simply **risk** of disruption
- Be consistent in referrals the same disruptive behavior should warrant a conduct process regardless of the individual. Sanctioning should also be consistent
- Do not treat students or employees with disabilities differently than other students or employees other than providing reasonable accommodations under the law

PREGNANCY & TITLE IX: REGULATORY LANGUAGE

Pregnancy as a Temporary Disability

- “A Recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.”
34 C.F.R. 106.40

ADDRESSING INVOLUNTARY WITHDRAWAL

Engaging in involuntarily removing a student or employee with a disability is complex

- As of 2011, the law no longer applies “harm to self” as a basis for involuntary withdrawal, only “harm to others”
- OCR says **due process** is necessary to challenge assumptions that behavior is a threat that would support involuntarily removing a student or employee
- The institution must either follow appropriate disciplinary procedures for students or employees who engage in conduct that would violate the codes of conduct or engage in applying the ADA-created “Direct Threat” Test prior to removing an individual from school or work, **UNLESS** there is an immediacy of harm

“DIRECT THREAT” TEST

- A “Direct Threat” analysis applies to any individual who poses a “significant risk” of substantial harm or safety to others that cannot be eliminated or reduced by reasonable accommodation.
- To rise to the level of a direct threat, there must be **high probability of substantial harm and not just a slightly increased, speculative, or remote risk**

“DIRECT THREAT” TEST

Significant risk determination in assessing a Direct Threat must be made by considering the:

- 1) duration of the risk,
 - 2) nature and severity of risk,
 - 3) likelihood that the potential harm will occur,
 - 4) proximity of the potential harm.
- OCR is, by practice, deferential to institutions’ determinations of direct threat, but they insist that institutions make one

ADDRESSING HARM TO SELF

- Similar to the way a direct threat determination can be used to involuntarily and temporarily separate a student for the safety of the campus community, a legitimate safety risk determination can permit an institution to temporarily and involuntarily separate a student who represents a serious threat of self harm.
- The process for determining a legitimate safety risk is the same as making a direct threat determination, just with a different threshold as the applicable policy.
- Institutions should engage their BIT team to assess the level of risk and develop an action plan in response.

UPCOMING TRAINING AND EVENTS



**K-12 ADA/504
Coordinator**

August 4, 2021
11:00 am – 6:00 pm ET

Pricing:

\$499 non-member
\$399 member

[REGISTER](#)



**ADA/504
Coordinator**

August 10, 2021
11:00 am – 6:00 pm ET

Pricing:

\$899 non-member
\$799 member

[REGISTER](#)

To view the full schedule, visit atixa.org/events

UPCOMING WORKSHOP

Gender Identity on College Campuses: Managing Challenges

The Office for Civil Rights (OCR) released a new interpretation making it clear that OCR's enforcement Title IX encompasses discrimination based on sexual orientation and gender identity.

Need a quick dose of insights into OCR's new interpretation of sexual orientation and gender identity in Title IX? Register now for Monday's ~~half~~ workshop exploring gender identity protections on college campuses.

Workshop Details- Gender Identity on College Campuses: Managing Challenges

- Monday, June 21, 2021
- 11:00 am – 3:00 pm ET
- Pricing:
 - \$399 non-member
 - \$349 member
- [Click here](#) to register for the workshop

ATIXA TIME WITH IX

Become A Super Member of ATIXA in 2021



Access to ATIXA products and services worth up to \$20,000, without per item fees. Includes three complimentary registrations to ATIXA Certification Courses.

Included for Super Members (special pricing for all other ATIXA Members)



For those of you who came to rely on ATIXA's Investigation in a Box Kit, we're excited to present a much evolved version called the **ATIXA Title IX Toolkit (TIXKit)**. TIXKit features updated versions of all the templates, forms, and checklists of the original, plus widely expanded content to comply with the new regulations.

Please visit Resources www.ATIXA.org or contact Members@ATIXA.org