



## INVESTIGATOR ROUNDTABLE #9

"Severe" and "Pervasive"  
Conduct

*Facilitated by:*

Adam Wolkoff, Collin Baer, Donna Wagner,  
Pari Le Golchehreh

# UPCOMING EVENTS

## Digital Accessibility

Judy Risch  
Eudora Struble

**EDUCAUSE**

*join us in a post-conference  
follow up conversation*

*be prepared for new  
rules required of*  
**Higher Education  
& Medical Schools**

## NAVIGATING DIGITAL FOOTPRINTS IN HIGHER EDUCATION

A Social Media Crash Course on Apps and Data Collection

Anonymous & Location Sharing Apps:  
Verifying Information & Accessing Data

NOV 14, 11AM PDT / 2PM EDT

with Kate Legee & Isabel Mathews



## DEAR COLLEAGUE DIALOGUES

Equity & Access for All: How are Our Title IX and ADA/504 Communities Uniting to Promote Access?

Nov 21, 2024  
9am PDT/12pm EDT

# AGENDA



EEOC Definitions



Scenarios



Title IX & VI Definitions



Discussion

# WHAT IS SEVERE AND PERVASIVE?

- The **Equal Employment Opportunity Commission (EEOC)** defines conduct as "**severe**" or "**pervasive**" under Title VII when it creates a **hostile work environment**.
- This occurs when workplace harassment is sufficiently intense or frequent that it alters the conditions of employment and creates an abusive environment for the employee.

# SEVERE

- **Definition:** Severe conduct refers to incidents that are extremely serious in nature, even if they occur only once. They can include physical threats, intimidation, or explicit harassment based on race, gender, religion, national origin, age, disability, or another protected characteristic.
- **Examples of Severe Conduct:**
  - Physical assault or threats of violence.
  - Racial slurs, epithets, or highly offensive jokes.
  - Sexual harassment that involves unwelcome touching or overtly sexual behavior.
  - Even a single incident of severe conduct may be enough to create a hostile work environment if it is highly abusive or offensive.



# PERVASIVE

- **Definition:** Pervasive conduct refers to behavior that occurs repeatedly or is widespread, creating a work environment that is hostile, intimidating, or abusive. It does not have to be as extreme as "severe" conduct but occurs so frequently that it becomes a regular part of the work environment.
- **Examples of Pervasive Conduct:**
  - Repeated derogatory comments, jokes, or insults based on a protected characteristic.
  - A pattern of sexually suggestive remarks or repeated unwelcome advances.
  - Continual use of offensive language or harassment over an extended period of time.

# SEVERE AND PERVASIVE TOGETHER

- The EEOC considers conduct severe **or** pervasive when determining if a hostile work environment exists. However, if the behavior is not particularly severe, it must be pervasive to create an actionable claim, and if it's not pervasive, it must be severe.
- **Factors Considered by the EEOC:**
- The EEOC looks at the **totality of the circumstances** when determining whether conduct is severe or pervasive, including:
  - The frequency of the conduct.
  - The severity of the conduct.
  - Whether the conduct is physically threatening or humiliating, or merely offensive.
  - Whether the conduct unreasonably interferes with an employee's work performance.
  - Importantly, occasional, isolated incidents (unless extremely serious) are typically not enough to meet the standard of severe or pervasive harassment. The conduct must create an environment that a **reasonable person** would find hostile or abusive.

# TITLE IX STANDARDS: 2020 AND 2024

- 2020 Regulations: Severe, Pervasive, and Objectively Offensive (*Davis* standard)
- 2024 Regulations: Severe or Pervasive (Intentionally aligns with Title VII standard)



# 2024 TITLE IX REGULATIONS: 5 COMPONENTS

- To create a hostile environment, conduct is
- (1) unwelcome,
- (2) sex-based,
- (3) subjectively and objectively offensive, and
- (4) so severe or pervasive
- (5) that it results in a limitation of or denial of a person's ability to participate in or benefit from the education program or activity.

**Must have all 5 above!**



# HOSTILE ENVIRONMENT SEX-BASED HARASSMENT FACTORS TO CONSIDER IN DECISION-MAKING

- (1) the degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- (2) the type, frequency and duration of the conduct;
- (3) the parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (4) the location of the conduct and the context in which the conduct occurred; and
- (5) other sex-based harassment in the recipient's education program or activity.

# TITLE VI STANDARD

- Generally, unwelcome conduct based on race, color, or national origin (including shared ancestry) creates a hostile environment under Title VI when, based on the totality of the circumstances, it is:
  - subjectively and objectively offensive; and
  - so severe or pervasive that it
  - limits or denies a person's ability to participate in or benefit from the recipient's education program or activity
- Protected speech can create a hostile environment
- See Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses July 2, 2024



# SCENARIO #1

- Julie, an employee at a large university on the East Coast, attends a team meeting where her colleague, Mike, makes an offhanded remark about how "women are always better at organizing things." Julie finds the comment mildly offensive, feeling it reinforces gender stereotypes. Mike's comment was not directed at her specifically, and it was the only instance in which he made such a remark during their time working together. After the meeting, Mike apologizes, explaining that he didn't mean to offend anyone, but Julie feels the apology was insincere and thinks that Mike has a stereotyped view of women.

# SCENARIO #2

- Arnold, an African-American employee in the facilities department at a small university, is subjected to racial comments by several co-workers. The slurs occur multiple times a week, often in the form of jokes, mocking, and name-calling. On one occasion, someone leaves a racially offensive note on his workbench. The environment becomes increasingly toxic as other employees join in or stay silent, allowing the behavior to continue unchecked.
- He reports the incidents to his supervisor, but no action is taken to stop the harassment, and his supervisor reminds him that many of these remarks are just jokes between coworkers. His supervisor notes that one of the employees who is White, is married to an African American woman, and other employees who are also African American have never complained. Over time, Arnold becomes isolated from his colleagues and starts experiencing anxiety, depression, and a decline in job performance.

# THANK YOU!

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