DEFINING EDUCATION PROGRAM OR ACTIVITY
Applicable Regulations and Laws

The Department of Education’s Office for Civil Rights (OCR) says that the goal of Title IX’s non-discrimination mandate is to ensure that “federal funds are not used to support discriminatory practices in education programs or activities.”
What case law is OCR drawing on to define education program or activity?


In *Davis*, the Supreme Court framed the question in that case as whether a recipient of Federal financial assistance may be liable for damages under Title IX, for failure to respond to peer-on-peer sexual harassment in the recipient’s program or activity.

“Moreover, because the harassment must occur ‘under’ ‘the operations of’ a funding recipient … the harassment must take place in a context subject to the school district’s control. . . . These factors combine to limit a recipient’s damages liability to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs.”
Defining Education Program or Activity

Norwich University’s education program or activity is defined as circumstances where circumstances where we **exercise substantial control over both the harasser and the context** in which the harassment occurs.

This includes all on campus and Norwich owned spaces.
Defining Education Program or Activity

OCR further clarifies context; stating that it is additionally “locations, events, or circumstances over which the [institution] exercised substantial control… and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.”

Example:

- This would include a house that is not owned by Norwich, but is owned by an officially recognized club or association.
Education Program of Activity in the Off-Campus Setting

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 University's “operations”
2. if the recipient exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus;
3. or if a sexual harassment incident occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution*

*this applies irrespective of whether or not Norwich has exercised substantial control over the respondent and the context of the harassment