



**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?

- *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639 (1999).

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