

Law 6930: Title IX and Civil Rights (Fall 2020)

Course Syllabus

INSTRUCTOR: SevaPriya Barrier (sevapriyabARRIER@ufl.edu)

OFFICE HOURS: Fridays between 9-11 am. However, I am available at other times. All hours are by appointment.

CLASS SCHEDULE: Tuesdays 5:40 pm – 7:40 pm

COURSE WEBSITE:

Please register for the class CANVAS website, available at <http://elearning.ufl.edu>.

All course materials are accessible on Canvas. Please look for readings in the files section.

Class information and announcements will be distributed by e-mail to the address you supplied on CANVAS. You are responsible for checking your e-mail on a regular basis for class announcements.

PURPOSE OF THE COURSE: One of the most important civil rights laws in our nation's history was the enactment of Title IX of the Education Amendments of 1972. This course offers an in-depth examination of the history and implications of Title IX on various dimensions of education with a particular focus on campus sexual misconduct. Students will use the lens of Title IX to examine sexual violence as both a product and cause of gender inequality and discrimination. Students will study key legal guidance, cases, and commentary to gain an understanding of both the practical applications and theoretical underpinnings of Title IX.

OBJECTIVES OF THE COURSE:

Students will:

- develop an understanding of and ability to interpret and apply Title IX and related federal regulations and legal guidance;
- analyze the history of Title IX and the social context that give rise to the legislation;
- learn how educational institutions approach Title IX compliance, including the development of internal compliance programs;
- critically analyze Title IX and assess its impact on the U.S. education system;
- learn practical skills that may lead to compliance-based careers.

REQUIRED READING MATERIALS:

The Law of Higher Education (6th Edition – student version) by William Kaplin, Barbara Lee, Neal Hutchens, Jacob Rooksby.

All other readings will be made available electronically on Canvas.

GRADING: 2 Graded units

BASIS FOR GRADING:

Grading will be based on this formula:

In-class presentation (25%)

Final exam (60 %)

Participation (15%)

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

August 25: Course Introduction

Required Readings:

Law in Action: A Socio-Legal Reader. Chapter 3, American Legal Culture: The Last Thirty-Five Years pp 262-267

Law in Action: A Socio-Legal Reader. Chapter 4, The Impact of Law on Society, Introduction pp 367-69 (top section of page)

Law in Action: A Socio-Legal Reader. Chapter 4, Can We Depend on Individuals to Implement Rights? pp 542-562

Law in Action: A Socio-Legal Reader. Chapter 4, Legal Structure and Implementing Law pp 565-593

Citations:

Macaulay, Stewart, et al. *Law in Action: A Socio-Legal Reader*. Foundation Press, 2007.

September 1: Development of Rape Law

Required Readings:

The Logic of Experience: Reflections of the Development of Sexual Harassment Law pp 813-834

Rape Reform and Statutory Consent Defense pp 1518- 1555

Criminal Law and Its Processes: Eliminating the Force Requirement pp 363 – 368 & pp 376 – 383

Handbook on Sexual Violence: The Legal Heritage of the Crime of Rape pp 69-87

Citations:

Brown, Jennifer, and Sandra Walklate. *Handbook on Sexual Violence*. Routledge, 2012.

Kadish, Sanford H., et al. *Criminal Law and Its Processes: Cases and Materials*. 9th ed., Wolters Kluwer, 2012.

MacKinnon, Catherine A. “The Logic of Experience: Reflections on the Development of Sexual Harassment Law.” *Georgetown Law Journal*, vol. 90, 2002, pp. 813–834.

Tchen, Christina M. “Rape Reform and a Statutory Consent Defense.” *The Journal of Criminal Law and Criminology*, vol. 74, no. 4, 1983, pp. 1518–1555.

September 8: Discrimination and Harassment in the Employment Context

Required Readings:

The Law of Higher Education. Chapter 4 Employment Discrimination, sections 4.5.1-4.5.2.2 pp 162-180, section 4.5.2.4 pp 181-182, section 4.5.2.7 pp 190-925, and sections 4.5.2.9-4.5.2.10 pp 194-201

A Short History of Sexual Harassment pp 1-27 (to “...arenas of civic importance.”)

Citations:

Kaplin, William A., and Barbara A. Lee. *The Law of Higher Education: Student Version*. Jossey-Bass, 2020.

Siegel, Reva B. “Introduction: A Short History of Sexual Harassment.” *Directions in Sexual Harassment Law*, Oct. 2003, pp. 1-27.

September 15: Administrative Law, Equity in Athletics

Required Readings:

Judicial Deference to Administrative Agencies and Its Limits pp 596-609

The Law of Higher Education. Chapter 1 Administrative Rules and Regulations, section 1.4.2.3 pp 19-20

The Law of Higher Education. Chapter 10 Sex Discrimination: Athletics, section 10.4.6 pp 774-789

The Law of Higher Education. Chapter 4 Title IX, section 4.5.2.3 pp 180-181

The Law of Higher Education. Chapter 11 Title IX section 11.5.3 pp 861-879

Dear Colleague Letter: Athletics (2010) pp 1-13

Citations:

Ali, Russlynn. "Dear Colleague Letter" *U.S. Department of Education*, Office of the Assistant Secretary, 20 April 2010.

Kaplin, William A., and Barbara A. Lee. *The Law of Higher Education: Student Version*. Jossey-Bass, 2020.

Martin, Graham G., and Super, David A. *Judicial Deference to Administrative Agencies and Its Limits*, 40 Clearinghouse Rev., 2007.

September 22: Regulatory Guidance and Enforcement

Required Readings:

Revised Sexual Harassment Guidance pp 2-21

OCR Dear Colleague Letter on Title IX Coordinators (2015) pp 1-7

OCR Complaint Processing Procedures pp 1-6

University of Montana Resolution Agreement pp 1-16

Citations:

Bhargava, Anurima, and Gary Jackson. "Re: DOJ Case No. DJ 169-44-9, OCR Case No. 10126001." Letter to Royce Engstrom, Lucy France (University of Montana). 9 May 2013.

Lhamon, Catherine. "Dear Colleague Letter" *U.S. Department of Education*, Office of the Assistant Secretary, 24 April 2015.

United States Department of Education. (2015). OCR Complaint Processing Procedures.

United States Department of Education. (2001). Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.

September 29: Admissions and Access

Required Readings:

The Law of Higher Education. Chapter 7, Admissions: Sex, section 7.2.4.2 pp 402 – 407

The Law of Higher Education. Chapter 7, Student Housing, sections 7.4 – 7.4.2 pp 473 – 484

Higher Education and the Law. United States v. Virginia pp 669 – 681

20 USC Section 1681 Sex, exemptions

Grove City v. Bell

Civil Rights Restoration Act (1987)

Social Fraternities and Sororities and Title IX exemptions pp 1-2

Citations:

Kaplin, William A., and Barbara A. Lee. *The Law of Higher Education: Student Version*. Jossey-Bass, 2020.

Areen, Judith, and Peter F. Lake. *Higher Education and the Law*. 2nd ed., Foundation Press, 2014.

Grove City v. Bell, 465 U.S. 555 (1984)

Smith, William. Memorandum to OCR Senior Staff, *U.S. Department of Education*, Office of the Assistant Secretary, (undated)

Title 20 U.S.C. Sections 1681-1688

October 6: Sexual Harassment in the Educational Setting

Required Readings:

Gebser v. Lago Vista Indep. Sch. Dist. pp 274-293 (majority opinion)

Davis v. Monroe County Bd. of Ed. pp 629-654 (majority opinion)

The Law of Higher Education. Chapter 8 Sexual Harassment of Students by Faculty, section 8.5 pp 577-599

Citations:

Davis v. Monroe County Bd. of Ed., 526 U.S. 629 (1999)

Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998)

Kaplin, William A., and Barbara A. Lee. *The Law of Higher Education: Student Version*. Jossey-Bass, 2020.

October 13: Student Conduct Systems and Procedural Requirements

Required Readings:

Higher Education Law: Policies and Perspectives. Chapter 6 Contractual Relationship between Student and University pp 149 - 162

Higher Education Law: Policies and Perspectives. Chapter 7 Procedural Due Process of Law pp 164 - 188

Higher Education Law: Policies and Perspectives. Chapter 8 Substantive Due Process pp 190 - 216

The Law of Higher Education. Chapter 9 Student Disciplinary Issues pp 621 - 656

Citations:

Alexander, Klinton W., and Kern Alexander. *Higher Education Law: Policy and Perspectives*. Routledge, 2017.

Kaplin, William A., and Barbara A. Lee. *The Law of Higher Education: Student Version*. Jossey-Bass, 2020.

October 20: Changes in Regulatory Guidance re Campus Sexual Misconduct

Required Readings:

Sexual Assault on Campus Shrouded in Secrecy

Lax Enforcement of Title IX in Campus Sexual Assault Cases

Several Students Win Recent Lawsuits against Colleges That Punished Them for Sexual Assault

What Went Wrong With Title IX?

Why Title IX has Failed Everyone on Campus Rape

Citations:

Bagenstos, Samuel R., "What Went Wrong With Title IX?" *Washington Monthly*, <https://washingtonmonthly.com/magazine/septoct-2015/what-went-wrong-with-title-ix/>, 2015.

Lombardi, Kristen. "Lax Enforcement of Title IX in Campus Sexual Assault Cases." *Center for Public Integrity*, <https://www.publicintegrity.org/2010/02/25/4374/lax-enforcement-title-ix-campus-sexual-assault-cases-0>, 2009.

Lombardi, Kristen. "Sexual Assault on Campus Shrouded in Secrecy." *Center for Public Integrity*. <https://www.publicintegrity.org/2009/12/01/9047/sexual-assault-campus-shrouded-secrecy>, 2009.

Moskovitz, Diana. "Why Title IX Has Failed Everyone on Campus Rape." *Deadspin*. <https://deadspin.com/why-title-ix-has-failed-everyone-on-campus-rape-1f765565925>, 2016.

New, Jake. "Several Students Win Recent Lawsuits against Colleges That Punished Them for Sexual Assault (Out of Balance)." *Inside Higher Ed*.

<https://www.insidehighered.com/news/2016/04/14/several-students-win-recent-lawsuits-against-colleges-punished-them-sexual-assault>, 2016.

October 27: Impact on Victims

Required Readings:

A Lack of Consequences for Sexual Assault

On Top of Everything Else, Sexual Assault Hurts the Survivors' Grades

Citations:

Lombardi, Kristen. "A Lack of Consequences for Sexual Assault." *Center for Public Integrity*. <http://www.publicintegrity.org/2010/02/24/4360/lack-consequences-sexual-assault>, 2010.

Simon, Cari. "On Top of Everything Else, Sexual Assault Hurts the Survivors' Grades." *The Washington Post*. https://www.washingtonpost.com/posteverything/wp/2014/08/06/after-a-sexual-assault-survivors-gpas-plummet-this-is-a-bigger-problem-than-you-think/?utm_term=.280fcb7821a9, 2014.

November 3: Related Laws and Guidance

Required Readings:

Dear Colleague Letter on Transgender Students (2016) pp 2-8

The Law of Higher Education. Chapter 7, section 7.8 pp 527-543

The Law of Higher Education. Chapter 7, section 7.6 pp 507-522

The Law of Higher Education. Chapter 9, section 9.4. pp 656-673 and section 9.5.2 pp 681-689

Revised Sexual Harassment Guidance pp 22-23

Dear Colleague Letter: First Amendment pp 1-2

Supporting the Academic Success of Pregnant and Parentings pp 5-12

Questions and Answers on Title IX and Sexual Violence, Retaliation pp 42-43

Citations:

Kaplin, William A., and Barbara A. Lee. *The Law of Higher Education: Student Version*. Jossey-Bass, 2020.

Lhamon, Catherine. "Dear Colleague Letter" *U.S. Department of Education*, Office of the Assistant Secretary, 13 May 2016.

Reynolds, Gerald. "Dear Colleague Letter" *U.S. Department of Education*, Office of the Assistant Secretary, 28 July 2003.

United States Department of Education. (2001). Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.

United States Department of Education. (2013). Supporting the Academic Success of Pregnant and Parenting Students (pamphlet).

November 10: Compliance

Required Readings:

U.S. Finds Tufts Is Violating Rules on Sexual Assault, Amid Larger Crackdown
Revived Title IX Agreement with Tufts Signals Stricter Enforcement
Federal Sentencing Guidelines §8B2.1. (Effective Compliance and Ethics Program)
Academic Compliance Programs: A Federal Model with Separation of Powers

Citations:

Adams, Nathan A. “Academic Compliance Programs: A Federal Model with Separation of Powers.” *The Journal of College and University Law*, vol. 41, no. 1, 2015, pp. 1-24.

Lipka, Sara. “Revived Title IX Agreement with Tufts Signals Stricter Enforcement.” *The Chronicle of Higher Education*. <https://www.chronicle.com/article/Revived-Title-IX-Agreement/146501>, 2014.

Stratford, Michael. “U.S. Finds Tufts Is Violating Rules on Sexual Assault, Amid Larger Crackdown (Standoff on Sexual Assaults).” *Inside Higher Ed*. <https://www.insidehighered.com/news/2014/04/29/us-finds-tufts-violating-rules-sexual-assault-amid-larger-crackdown>, 2014.

United States Sentencing Commission. (2016). United States Sentencing Guidelines Manual §8B2.1.

November 17: Rulemaking

Required Readings:

83 Fed. Reg, 61,462 – 61,483
85 Fed. Reg, 30,026 – 30,032

Citations:

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 83 Fed. Reg. 61,462 (Nov. 29, 2018)

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (May 19, 2020).

December 1: TBD

December 17: 8:30 am

Final Exam

STANDARD COURSE AND UNIVERSITY POLICIES

ATTENDANCE AND ABSENCES:

Attendance will be taken in each class and you are expected to be on time. Missing 2 or more classes without prior notice to the instructor will result in a reduction of your course participation grade. Missing 4 or more classes will result in your ineligibility to take the final exam.

Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with University policies that can be found here:

<https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>

Absences for any religious observance will be accommodated in accordance with UF guidelines found here: <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/#religiousholidaystext>

PREPARING FOR CLASS MEETINGS: Students are required to do reading before the class meeting. Students will be expected to participate in discussions and be prepared to discuss their clinic projects. Failure to be prepared will affect the student's participation grade.

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction.

ASSIGNMENTS: Assignments are to be handed in at the time expressed by the instructor and in the method designated, whether that is in person, by e-mail or upload. Late materials will not be accepted without express permission of the instructor.

COMMUNICATIONS: Generally, students should not expect an immediate response, and should wait at least 24 hours before writing again. You are responsible for reading emails sent to your UF account from your instructor and the announcements that are placed on the course web site. Information about readings, news events, your grades, assignments and other course related topics will be communicated to you with these electronic methods.

CLASSROOM BEHAVIOR AND CONDUCT: We will review behavior and conduct expectations during our first class.

ACADEMIC INTEGRITY: UF students are bound by The Honor Pledge, which states: "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: 'On my honor, I have neither given nor received unauthorized aid in doing this assignment.'"

This Honor Code promotes respect for academic integrity and prohibits behavior including cheating, plagiarism, taking or receipt of material or resources to gain an improper academic advantage. Student are responsible for understanding all expectations and violations or the

Student Honor Code which can be found: <https://sccr.dso.ufl.edu/policies/student-honor-code-student-conduct-code/> Any Student who becomes aware of a violation of the Student Honor Code should report the violation to the appropriate university official. If you have any questions or concerns, please consult with the instructor. Students who are found to be dishonest will be reported to the Dean of Students Office and receive sanctions, such as a failing grade on the assignment, exam, and/or in the course.

Students are bound by the UF Law Honor Code, which can be found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

NOTIFICATION OF OBJECTIONABLE MATERIALS: Although some students may deem course content offensive, such materials are deemed important for the learning process. Students are not excused from interacting with such materials, but they are certainly encouraged to express well-formed opinions that express those objections and their reasons for them.

CANVAS: Please register for the class CANVAS website, available at <http://elearning.ufl.edu>. Class information and announcements will be distributed by e-mail to the address you supplied on CANVAS. You are responsible for checking your e-mail on a regular basis for class announcements.

SYLLABUS/SCHEDULE SUBJECT TO CHANGE: Information contained in the course syllabus and schedule of assignments, other than the grade and absence policy, may be subject to change with advance notice, as deemed appropriate by the instructor.

ONLINE COURSE EVALUATION: UF expects each student to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open by the Office of Student Affairs. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

ACCESSIBILITY AND ACCOMMODATIONS (DISABILITY):

Students requesting accommodation should first register with the UF Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter, which should be presented to the UF Law Office of Student Affairs when requesting accommodation. This procedure should be followed as early as possible in the semester. Law students with disabilities can also contact the Levin College of Law Office of Student Affairs for assistance on these matters in 164 Holland Hall, 273-0620, www.law.ufl.edu/students/.

STUDENT ASSISTANCE:

For technical difficulties with E-learning in Canvas, please contact the UF Help Desk at: helpdesk@ufl.edu , (352) 392-HELP, <http://elearning.ufl.edu/> (See “Message Us” at the top)

For personal needs to support well-being resources information is available at <https://umatter.ufl.edu/> for counseling and wellness, disability resources, student complaints, and student health support.