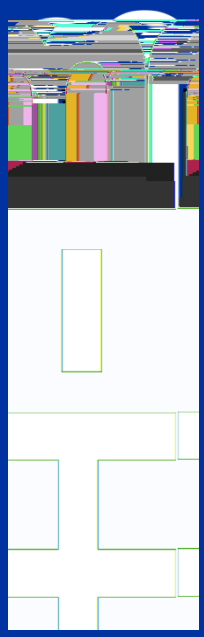

Title IX & Sexual Harassment Response – Advanced Course

Participants in Sexual Harassment policy process
2021

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Agenda

- Title IX jurisdiction
- Investigations
- Hearings
- Parallel processes

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What is the basic Title IX jurisdictional test?

- Title IX applies to sexual harassment that occurs:
  - On campus
  - On other property substantially controlled by the institution
  - In the house of a recognized student organization
  - Or elsewhere in the context of an institution program or activity

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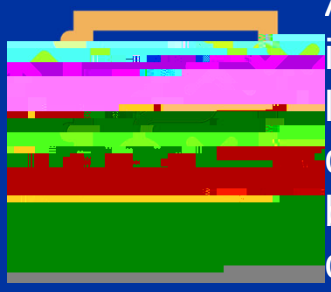
Example



A student worker is sexually assaulted in the kitchen of a fast food restaurant located in the Student Union, which is on campus. The restaurant is owned by a non profit food and beverage corporation of which the institution's president is the sole shareholder.

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Example

The institution's business school has rented a local event venue for a diversity banquet. During the reception, one student is sexually harassed by another student. The local event venue is owned by a private company.

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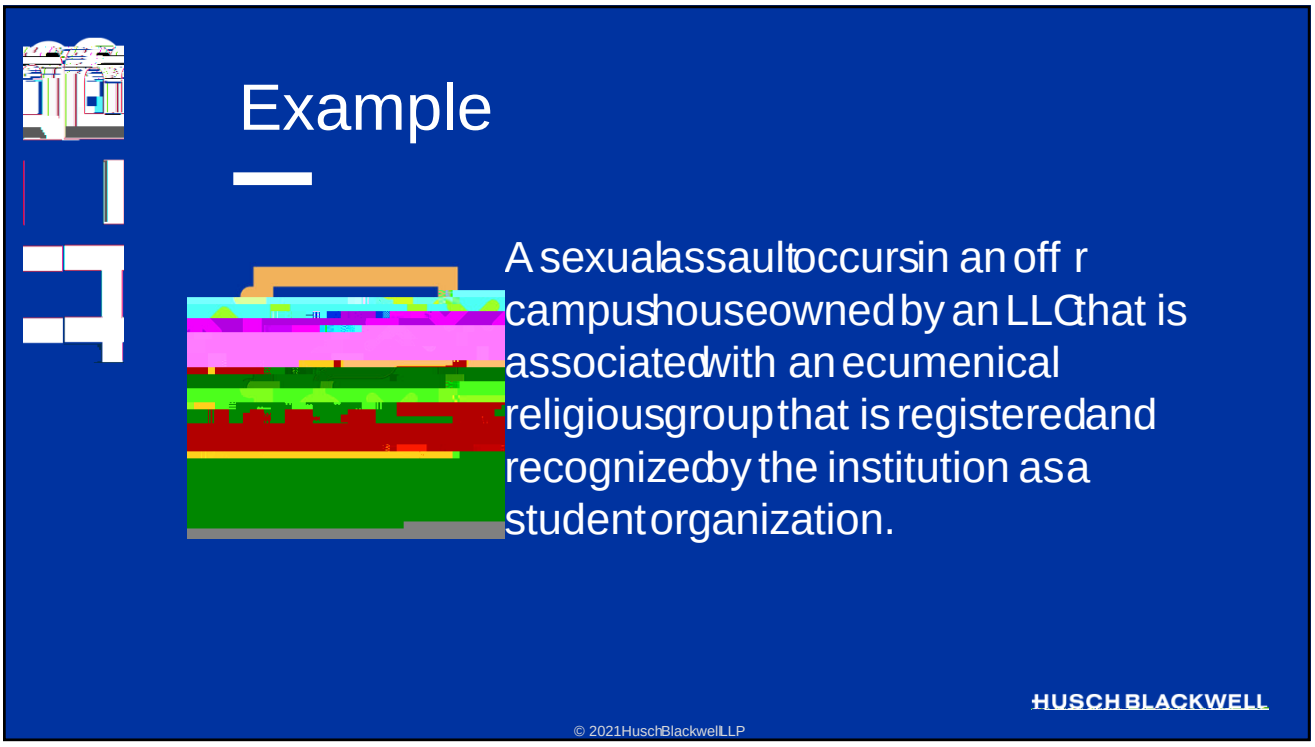

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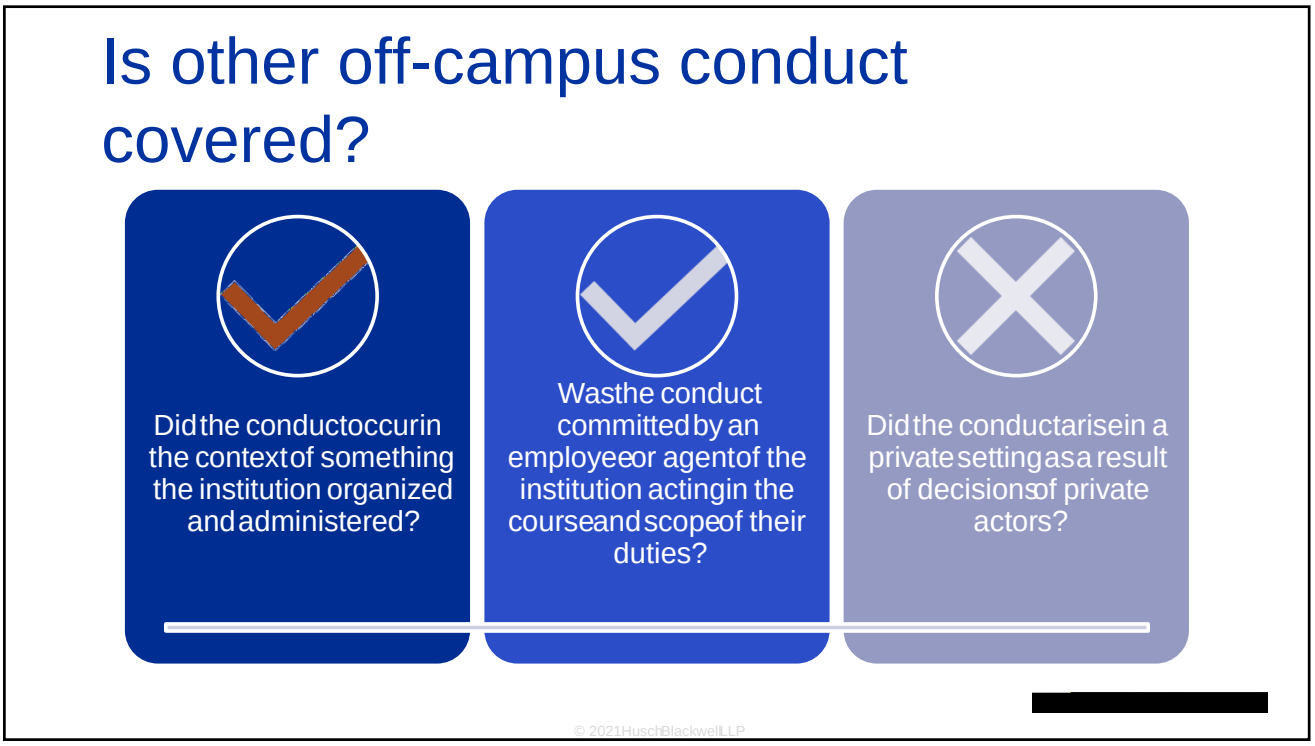

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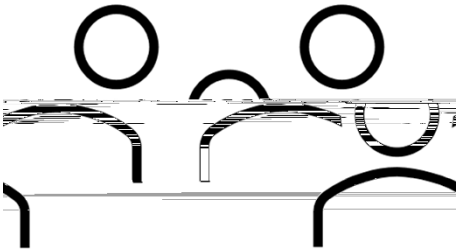
Do we need disciplinary jurisdiction "over the parties"?

- No
- Jurisdiction focuses on the *context* in which the reported harassment arose
- Ability to discipline parties may affect the *disposition*



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Example

During an on-campus football game an adult fan sexually propositions and fondles another fan without consent. Neither fan is a student or employee. The putative victim is 16 years old.

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What if a complainant is not a student or employee?

- To make a formal complaint, the complainant must be a current or attempted participant in the institution's programs or activities
- But Title IX coordinator retains ability to act as a complainant regardless of the putative victim's status

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What if the complainant ceases being a student or employee?

- It makes no difference so long as the Title IX grievance process was appropriately initiated
- A complainant's graduation, termination, or separation does not automatically terminate a Title IX grievance process
- A complainant's *refusal to participate* may trigger permissive dismissal if other sufficient evidence is not available

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Title IX & Sexual

How do we address jurisdiction for pre-August 2020 misconduct?

- Regulations apply to conduct occurring on or after August 14, 2020
- But pre-August 14, 2020, Title IX policies have been superseded by new ones with jurisdictional limits

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Example

Institution's pre-August 2020 Title IX policy applied to all student on student harassment, regardless of location. In December 2020, Student A reports that Student B sexually assaulted Student A at an off-campus party in May 2020.

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