



Title IX

Employee Training

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Title IX - what we will cover

- What is Sexual Harassment?
- Consent and Incapacitation
- Jurisdiction
- Our Title IX Process (what you need to know)
- How to Report Possible Violations of Title IX

What is Title IX?

- Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in *all areas of education*.
 - Applies to non-discrimination based on sex/gender to all recipients of federal funds, both public and private institutions
 - Applies to issues of program equity, such as in athletics, and also to sexual harassment, sexual misconduct, and gender discrimination.
- In addition to the implementing regulations, the guidelines for compliance with Title IX are provided by the U.S. Department of Education, Office of Civil Rights (OCR).

What is Sexual Harassment as defined by OCR

- *Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:
 - (1) **Quid Pro Quo** - An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct;
 - (2) **Hostile Environment** - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity; or
 - (3) **VAWA Offenses** - "Sexual assault", "dating violence", "domestic violence", or "stalking" all as defined in by federal law.

What is Sexual Harassment as defined by OCR

- *Sexual Assault* means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
 - Rape, fondling, etc.

What is Sexual Harassment as defined by OCR cont.

- **Sex Offenses, Forcible**—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
 - **Forcible Rape**—(Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.
- **Forcible Sodomy**—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

What is Sexual Harassment as defined by OCR cont.

- Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- Forcible Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

What is Sexual Harassment as defined by OCR cont.

- Sex Offenses, Nonforcible—(Except Prostitution Offenses) Unlawful, nonforcible sexual intercourse.
 - Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent

What is Sexual Harassment as defined by OCR cont.

Dating Violence means violence committed by a person –

- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of the interaction between the persons involved in the relationship.

What is Sexual Harassment as
defined by OCR cont.

- *Domestic Violence* – The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim *as a spouse or intimate partner*.
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What is Sexual Harassment
as defined by OCR cont.

- *Stalking* – The term “stalking” means engaging in *a course of conduct* directed at a specific person that would cause a reasonable person to –
 - (A) Fear for his or her safety or the safety of others; or
 - (B) Suffer substantial emotional distress.

What may also be Sexual Harassment?

- Sexual Exploitation, which may constitute behavior that does not fall within the definitions of sexual assault that may meet the definition of Sexual Harassment as defined previously.
 - Sexual voyeurism (such as watching a person undressing)
 - Invasion of sexual privacy.
 - Taking pictures or video or audio recording another in a sexual act, or in any other private sexual activity without consent.
 - Sexting or sending vulgar images without consent.

Examples of behavior which may constitute Sexual Harassment:

- A professor insists that a student have sex with him/her in exchange for a good grade.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class.
- Engaging in direct messaging with your student or athlete which becomes intimate in nature.

Examples of behavior which
may constitute Sexual
Harassment:

- Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless “remarks”.
- A student persists in sending intimate pictures to an employee even after the employee has informed the student to stop.
- An employee repeatedly comments about another employee's body.

Tips to help protect yourself
from an accusation (avoid the
perception)

- Do not meet with a student alone with the door closed or in an isolated area.
- Do not drive a student alone, if possible.
- Do not direct message a student without including another coach, advisor, or assistant (We've heard from several students that Direct Messaging can be perceived as 'creepy' or 'too intimate').

What is Consent?

- Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.
- Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity.
- For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.
- Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

What is Incapacitation?

- Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- Our policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

Jurisdiction

The University's jurisdiction over sexual harassment, domestic and dating violence, and stalking includes locations, events, or circumstances over which:

1. the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and
2. includes any building owned or controlled by a student organization that is officially recognized by the institution.

TU's Responsibility

- Once an employee/mandatory reporter (and that is everyone but Dr. Michell Temple) has actual notice of sexual harassment, sexual misconduct, or gender discrimination the school must:
 - Take immediate and appropriate steps to investigate what occurred.
 - The obligation to investigate is absolute, even if just a preliminary inquiry.
 - Take prompt and effective action to:
 - Stop the harassment or other behavior;
 - Prevent the recurrence; and
 - Remedy the effects or the harassment.
- Notice must be actual knowledge – meaning that the employee must have been told by the complainant that they may have been a victim of sexual harassment or gender discrimination. This triggers the mandatory report to the Title IX Coordinator.

Our process (what you need to know):

- Every employee is a mandatory reporter (except the designated campus counselor)
- Upon having been informed of a potential violation of Tusculum University's Title IX Policy, mandatory reporters must notify **Mikaela Cooney or Jon Gresham** within 24 hours of having been made aware.
- We will conduct a preliminary inquiry to determine if the reported behavior violates our policy:
 - If not, we will forward the behavior to the office best situated to remedy the behavior.
 - If so, we will assign two investigators to begin our formal process according to the TU Title IX policy (an informal process also exists).

Confidential but not Secret

- Employees must keep potential violations of Title IX confidential, except to report the behavior to the Title IX Coordinators.
- Inform all students that you cannot keep potential violations of Title IX a secret, but you have an obligation to report it to the Title IX Coordinators.
- Dr. Temple, the campus counselor and ADA coordinator, is the only person on campus who must keep Title IX violations secret (in most cases)

Who to report a possible violation of Title IX:

- Mikaela Cooney:
mcooney@Tusculum.edu ;
x5259; Library 123
- Jon Gresham:
jgresham@Tusculum.edu ;
(423) 636-7318 (Campus
Safety) or (423) 787-8318
(office direct line), or x5070;
Niswonger Commons 222

Questions?

- Our Title IX website is located at:
<https://web.tusculum.edu/titleix/>
- On this site, you can find the link to our full policy and procedures on how we deal with reported discrimination.